SPECIAL NUMBER

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SHL WITHDRAWN

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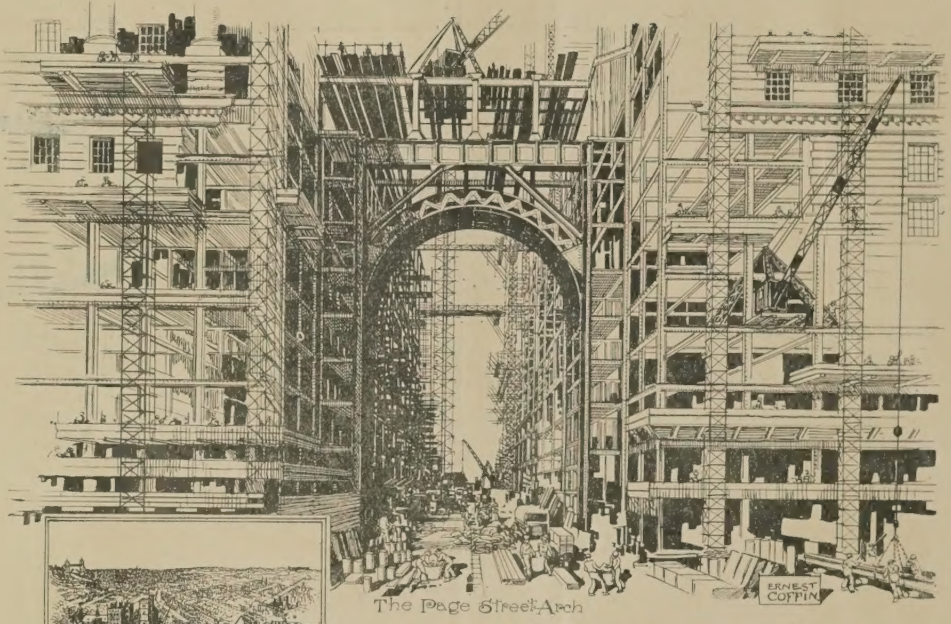

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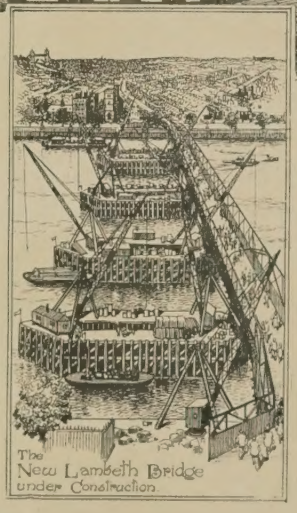

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The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page iii.

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Current Topics.

The New Judge.

IN SOME quarters a fear was entertained that the Chancellor of the Exchequer, in his zeal for economy, might put obstacles in the way of appointing a successor to Mr. Justice HILL in the Probate, Divorce and Admiralty Division. Happily, any such fears have been dissipated, and, with fair promptitude, Mr. G. P. LANGTON has been selected to fill the vacant post. The new judge has practised almost exclusively in Admiralty, although every now and again he has appeared in the Commercial Court where his special knowledge of shipping law was of value. As an advocate he has been forceful and clear in his narration of the facts, which is always a great asset. He is still a young man—he is on the right side of fifty—and he thus brings to the discharge of his new duties a vigour, both physical and intellectual, which will find an outlet in the prompt despatch of business. During the war he was attached for a time to the Intelligence Department at the War Office, after having served with the Royal Garrison Artillery.

The New Solicitor-General.

IT HAS often been remarked that the English people seem to have a perfect genius for devising titles for various offices which appear to be remote from their true description. This is particularly noticeable in the titles borne by the law officers of the Crown—the Attorney-General and the Solicitor-General—of whom it has been said that the one is neither an attorney nor a general, and the other is neither a solicitor nor a general. But as again has often been said, despite these and other illogicalities in our official nomenclature, we contrive to get on quite comfortably, and the profession usually remains unconcerned regarding these vagaries in the matter of titles, but was concerned to learn who was to be selected to succeed Sir JAMES MELVILLE in the office of Solicitor-General. Rumour was persistent that the choice of the Prime Minister was likely to fall upon Mr. STAFFORD CRIPPS, K.C. In this instance rumour proved to be well founded, and the Crown has obtained the services of one who will prove a tower of legal strength to the Government. Mr. CRIPPS, who is a son of Lord PARMOOR, the Lord President of the Council, was called at the Middle Temple in 1913, and after fourteen years as a junior he became a silk, and since that advance in his professional status he has been more and more engaged in very heavy work in Parliamentary, revenue, and local government cases, in the conduct of which he has shown a complete mastery, while a clarity of expression and a quiet forensic manner have added greatly to the persuasiveness of his advocacy.

The Late Sir Guy Stephenson.

IN OUR last week's issue we briefly announced the death, after a long illness, of Sir GUY STEPHENSON, who for many years had filled the office of Assistant Director of Public Prosecutions. A son of Sir AUGUSTUS STEPHENSON, who long held the dual office of Solicitor to the Treasury and Director of Public Prosecutions, Sir GUY had a traditional association with the authorities at New Scotland Yard. But before his appointment as Assistant Director he served what may be called an apprenticeship as prosecuting counsel to the Treasury at North London Sessions, and by acting as joint editor of one edition of "Archbold's Criminal Pleading." In addition to a wide professional knowledge, he had many social gifts: he was a skilful musician and possessed a fund of quiet humour which found expression in many a telling quip. Many years ago, at a Bar dinner at which the late Sir RALPH LITTLER, who as chairman of Middlesex Quarter Sessions fully acted up to his belief in the propriety of imposing long sentences, was one of the principal guests, the late Sir GUY was unexpectedly called upon to make a speech. Apologising for not being prepared, he said that he would only trouble them, in the presence of Sir RALPH LITTLER, with a few "short sentences." Sir GUY was a universal favourite, and he will be much missed by a wide circle of friends.

The Acceptance of Gifts by Corporations.

IN THE litigation between Sir WALTER H. COCKERLINE and the Crown, carried unsuccessfully by the former to the Court of Appeal last week, the main point was whether assessment was a necessary condition precedent to the tax, and that was decided against the appellant. There was argument on another issue, however, namely, whether, if by

way of settlement of a dispute, certain money was paid to the Crown in respect of tax, and it was discovered afterwards that there was over-payment, receipt of the excess by the Commissioners of Inland Revenue was *ultra vires*, on the doctrine that the Crown cannot accept gifts. It was not necessary to decide this point, but the judges made no secret of their opinion that it was unsound, one pointing out that successive Chancellors of the Exchequer had received "conscience money" for generations without question. No doubt, once the money was handed over, the uneasy penitent would let it remain where it was, else his act of restitution would fail to benefit his soul, not to mention that, if he attempted to recover it, his identity would be made public against his desire. Naturally enough, therefore, the legality of the receipt of conscience money has not been tested. That the Crown is entitled to receive a gift, however, is fully apparent from such authorities as *Nightingale* v. *Goulburn* (1848), 2 Ph. 594, and *Ashton* v. *Lord Langdale* (1851), 4 De G. & Sm. 402. In these cases certain bequests were in terms made to the Queen's Chancellor of the Exchequer, and to the Commissioners of the Sinking Fund respectively, but they were, in effect, gifts by testators to the servants of the Crown as such, and so, in effect, to the Crown as a corporation sole. In *Newlands* v. *A.-G.* (1809), 3 Mer. 684, a bequest to the Government in exoneration of the National Debt was directed to be transferred to such person as the King, under his sign manual, should appoint. The question whether statutory bodies, whose powers are strictly defined by their Acts, can receive gifts (as distinct from bequests) as an inherent power of every legal entity, does not appear to have been expressly decided. A parish council has express statutory power to accept gifts, see Local Government Act, 1894, s. 8 (1) (*b*), which perhaps might afford some argument that such power must be explicitly given, but in *Slater* v. *Burnley Corporation* (1888), 59 L.T. 636, it was held that a voluntary payment to a waterworks authority was not recoverable. A statutory body is presumably of benefit to the community, otherwise it would not be allowed to exist, and, if the proposition that gifts increase the power of radiating benefit is conceded, it would no doubt be held that the law authorises them.

Once a Highway always a Highway.

THE FUNDAMENTAL principle that public rights in a highway, once proved to exist, cannot be released or extinguished except by statute or in a formal and legal manner by an order of the justices under the Highway Acts, has just been strikingly illustrated by the fact, as reported, that a certain rural district council has discovered that it is liable to repair a highway set out in an enclosure award made 117 years ago, and apparently forgotten almost ever since. *Turner* v. *Ringwood Highway Board*, L.R. 9 Eq. 418, is a decision to that effect. And now, according to a recent article in *The Autocar*, 22nd August, it is proposed to reconstruct and make fit for modern traffic a long stretch of one of the old Roman roads—the Ermine Street—in the County of Lincoln, a county which for some reason possesses the somewhat doubtful privilege of being governed by three county councils. Most of the Ermine Street, which leaves London over the Kingsland Road, is a good main road to this day, forming the Old, until it joins the Great, North Road. But a short distance south of Grantham, the modern road diverges to the west, and from thence to Lincoln, nearly 30 miles, the Roman road proceeds in a straight line on the map, though some of its course is now and probably has long been grass-grown and abandoned as a highway. The question arises whether it can be said that a Roman road, made centuries before the English common law came into being, is a highway within the principle "once a highway always a highway," which was restated by SWINFEN EADY, J., in 1908: *St. Ives Corporation* v. *Wadsworth*, 72 J.P. 73. In legal matters and origins the reign of RICHARD I is the dawn of history, behind which we are not expected to look. There can be no doubt however that the Roman roads lasted, as they were built to last, right through the mediæval period into later times; they were the royal routes, or King's highways, and for a very long time there were no other country roads to speak of, and until the middle of the eighteenth century, no other hard stone-made roads at all. Being highways at common law, therefore, no amount of disuse, enclosure or stopping-up, except under lawful authority, strictly proved to have been exercised, can abrogate the public right to use them, and the County Councils of Lindsey and Kesteven, through whose areas the Ermine Street runs, can proceed to restore it to modern use in spite of the fact, if it be so, that portions of it have become barely distinguishable from the surrounding fields. Should there be any section, however, to which all public access has been cut off by the destruction or lawful stopping-up of highways leading into it, legal difficulties may arise with the owners of the land through which the track passes: *Bailey* v. *Jameson*, 1 C.P.D. 329. But this appears unlikely. Otherwise it seems to be merely a matter of time and a money grant by the Ministry of Transport in aid of unemployment, which we believe has already been applied for, before the full use of Ermine Street is restored to a busier life than it ever knew before. This is not the only place in the country where a disused, or little used Roman road could, with great advantage to modern traffic conditions, be reconstructed.

Land Acquired for Specific Purposes by Local Authorities.

THE DECISION in *Attorney-General* v. *Manchester Corporation* (1930), 46 T.L.R. 629, establishes that local authorities, acting *bona fide*, must be the sole judges of whether land which they have acquired is "not required for the purposes for which it has been acquired," within the meaning of s. 175 of the Public Health Act, 1875, or s. 95 of the Public Health Acts Amendment Act, 1907. Purporting to act under the latter section, the Minister of Health had approved under his official seal of the corporation's appropriating land, acquired under its statutory powers fifty-three years before for street widening, to build a tuberculosis dispensary, which it was sought to prevent by injunction. Sixteen years after acquiring the land, the corporation handed it over to the care of a local parks committee, and carried out upon it various improvements. At the date of the action, when it had a fountain and convenience to which the public had access and shrubberies to which they had not, it was being used *de facto* as a public right of way. Before it was so handed over, little had been done with it beyond offering it at one time for sale as a building site. Taking that into consideration, and finding that it had not been laid into streets, MAUGHAM, J., dismissing the action, concluded that, despite the long public user, no dedication or intention to dedicate had been established, and that the public rights were precarious and possibly alterable by bye-laws, save in regard to the fountain. Such rights, he said, must, almost of necessity, yield to any alteration of the purposes for which the land has been acquired. Moreover, it rests with the local authority alone to decide whether land acquired under its statutory powers for defined purposes is "no longer required" for those purposes—a matter on which the court will say nothing. Approved new purposes must, of course, occasion no damage to neighbouring owners, and no nuisance. Subject to that, the local authority has a free hand.

Relief against Forfeiture where Lessees are Joint Tenants.

THE DECISION in *T. M. Fairclough and Sons Ltd.* v. *Berliner*, *The Times*, 16th October, brings into prominence a hardship which will be inflicted when relief against forfeiture of a lease under which two or more persons hold as joint tenants is not sought by all of those persons. In that case, two

persons held as joint tenants under a lease of which they had taken an assignment, and in which there were very full repairing covenants. Breaches of these were alleged by the lessor company, and were proved to the satisfaction of the court. The defence denied the breaches, and sought relief under s. 146 (2) of the Law of Property Act, 1925. One of the two defendants, however, who appeared in person, stated that he did not join in the application for relief; and MAUGHAM, J., took the view that that was sufficient to deprive the court of jurisdiction to grant the application. It was, he said, not accurate to describe either of the two defendants alone as the "lessee." The "lessee" in such a case, was constituted by the joint tenants together; and the elucidation of the word "lessee" in sub-s. 5 of s. 146 of the Law of Property Act, 1925, did not warrant the view that relief could be granted if only one of two or more holders under a lease as joint tenants applied for it. Such a course, he said, would be unjust; for it would have the effect of restoring the lease as though there had been no forfeiture, and also of reviving the liability of the lessee or lessees who had not applied for relief to the covenants in the lease. He therefore refused the application, and gave the lessor company possession. The decision makes clear that relief will not be granted on the application of only one of two or more joint lessees; but it does not, as reported, show whether it will be granted if several do apply for it and only one does not. It has apparently yet to be decided, for example, whether, if three out of four lessees who are joint tenants apply for relief and one does not, the application will be granted; if it is not granted, the majority of the lessees will suffer hardship; while, if it is granted, the lessee not asking for it, and possibly, as in the case before MAUGHAM, J., having a perfectly good and honest reason for his attitude, will, as MAUGHAM, J., pointed out, "continue to be liable to the covenants in the lease."

What is Litter?

TWO MEN, members of a motor-cycle club, were recently summoned for depositing "litter" on the highway. The litter in question took the form of a pale blue powder which the defendants had sprinkled along certain roads for the purpose of indicating the course over which a motor-cycle reliability trial was to be held. The bench imposed a fine of 5s. on each of the defendants. The question was whether the powder could be described as "litter." Murray's English Dictionary defines "Litter" as "Odds and ends, fragments and leavings lying about, rubbish, . . . a disorderly accumulation of things lying about." A necessarily wide definition, but no doubt one which heartily commends itself to those who recently took part in the anti-litter campaign in the New Forest, and to those in Yorkshire who assembled on Newby Moor on the 27th September and publicly burned an effigy of the "Litter Lout." "Paper-chasing," apparently not particularly popular nowadays, is also a game which provides youth with much opportunity for sprinkling miles of country roads and fields with small fragments of paper. The essence of the matter is, of course, that these things must be done in moderation. Obviously, no very great inconvenience or harm can come to the general public from the slight dissemination of blue powder. Suppose, however, two or three rival clubs had the misfortune to have on the same day trials which required the laying of a coloured trail, portions of our highways might then soon begin to resemble a rainbow if the clubs chose different colours. There is, too, another interesting point relating to motor-cycle trials on highways when speed is the deciding factor. The Highway Act, 1835, provides, *inter alia*, in s. 72, that the playing of football "or any other game" on any part of the highway to the annoyance of any passenger or passengers is an offence under the Act. A bicycle race on a highway has been held to be a game within the section (33 J.P. 570), so that a motor-cycle race would appear to present an *a fortiori* case.

Criminal Law and Practice.

WIFE AS WITNESS AGAINST HUSBAND.—The case of *R.* v. *Lapworth*, decided in the Court of Criminal Appeal on 20th October, may have come as a surprise to a certain number of people, although the soundness of the decision becomes clear upon a little consideration.

People have been apt to say generally that where a wife is a competent witness against her husband she is not compellable, and that therefore she ought to be so informed, upon the authority of *Leach* v. *R.*; *R.* v. *Acaster* [1912] A.C. 305; 76 J.P. 201; and *R.* v. *Acaster* (No. 2), 76 J.P. 263. In truth, however, that principle is limited, as is stated in some text-books, to the cases within the Criminal Evidence Act, 1898, or other statutes of a like nature.

R. v. *Lapworth* was a case of grievous bodily harm caused by a woman's husband, and the judge at the assizes compelled her to give evidence. In the Court of Criminal Appeal, passages from the judgments in *R.* v. *Leach* were referred to, but the court distinguished the two cases.

At common law, said Avory, J., the husband or wife was a competent witness for the prosecution where one spouse was charged with personal violence to the other; and if that were once established, it followed that the husband or wife was also compellable at common law.

The line of reasoning is clear enough: Where the witness is competent at common law, he (or she) is also compellable; but where the witness would not be competent but for a statutory enactment, then, if such enactment uses not the words "competent and compellable," but only the word "competent," the witness is not compellable, and should be so informed.

STANDARDS OF DECENCY.—The chief magistrate gave his decision last week at Bow-street Police Court upon an adjourned summons taken out by the police in respect of alleged indecent books and post cards which had been seized at the premises of an art dealer.

The question of what is obscene, or indecent, is apt to be a matter of great difficulty. Where a picture is grossly lewd and disgusting the way is plain. Here, however, there seems to have been no suggestion of the kind; it was rather a case in which there was room for an honest difference of opinion. A reputable art dealer contended that all the pictures were artistic and inoffensive to all normal people; the authorities argued that some, at allevents, of the representations tended to corrupt.

Sir Chartres Biron, after hearing counsel for the defence, said that he was prepared to allow the prosecution to be withdrawn if the defendant undertook to withdraw a few specified post cards and books which he had selected from the very large number seized. These matters, he said, were not easy to decide. The mere fact that some of the publications offended against a certain standard of taste did not make them in themselves indecent in the sense which a prosecution of this kind required before a destruction order could be made. Although many were of doubtful taste and might even be suggestive, it was difficult for him to hold that they would tend to corrupt anyone. The publications were imported from abroad, and it had to be remembered that in some countries a different view was taken from that obtaining in England.

Mr. Blain, for the defence, said that although his client did not subscribe to the view that any of the publications were liable to corrupt persons of stable morality, he would give the undertaking asked for.

Our own view is that in a case of this class, which was evidently not a wilful breach of the law, it is more important to vindicate the principle that the courts may be asked to decide whether a proper standard of decency has been observed than to attempt to define that standard dogmatically. No definition, however carefully devised, could really dispose of any case; in the end it must depend upon the individual opinion of the magistrate, and must vary to some extent. There is no mischief in that.

The Devil-Dodger.

An imaginary interview between "Mephistopheles" and a Briefless Barrister—and its consequences.

[CONTRIBUTED.]

THAT DAVID ANDERSON was hard up was a fact not sufficiently interesting at present to find a place as a news item in the most obscure corner of the most obscure paper in the country. But as this recently called barrister sat in his briefless Chambers, reflecting how much more he was paying out—or at least incurring a liability for—than was likely to come in for a long time, he began to think that his impecuniosity would soon reach that interesting stage which was certain of a line or two in every paper under the euphemistic heading: "The London Gazette: Latest Receiving Orders." It might even be deemed worth a heading to itself: "A Barrister's Bankruptcy." How did one refer in court to a bankrupt barrister? "My learned but insolvent friend," or "My insolvent but learned friend"? Well, probably no one would have the chance of referring to him at all, for he couldn't appear in court without a brief, and briefs showed a singular shyness.

David then began to do a most imprudent thing; he started to read the morning crop of money-lenders' circulars which littered his table.* They were much of a muchness, sent out by gentlemen who had apparently abandoned the kilt and the heather-clad moors to which their clans belonged for the purpose of proving to young men like David that Scotsmen, or at least money-lending Scotsmen, were the most generous and open-handed race on earth. He was not sure whether to be more impressed by Alexander Macdonald (Isaac Solomon)—oh! cruel Business Names Act, thus to destroy our illusions!—who asked him almost tearfully, "I trust you: Won't you trust me?" or by Donald Cameron (Jack Cohen), who protested that he was more concerned to help his clients than to make big profits. But Anderson, though young, was not quite a fool; if it be true that "A mug is born every minute," he was not the mug belonging to the minute of his birth. He dropped the effusions of the Macdonalds, the Camerons, the Grahams and the Robertsons one after another into his waste-paper basket. He did not even linger over the All-British Finance Company (Isidore Mirzawowski), and soon cleared the table, except for one envelope. The worst of these confounded money-lenders was that they sent their rubbishy circulars in plain sealed envelopes, which had to be opened, lest they should prove to contain letters of importance.

David tore open this last letter impatiently, and glanced at the contents; it was a money-lender's circular, yet it was not. Here was no Hebrew in Scot's clothing, but a gentleman trading under his own name. Compared with the flam-buoyant generosity of the others, the language was restrained; it ran as follows:—

S. Mephistopheles,
Financial Agent.

Dear Sir or Madam,—As the oldest-established financial agent in the world, I am in a position to offer my clients terms more acceptable than those of the usual money-lender. It is over the question of interest that trouble usually arises; I charge no interest, and require no tangible security; the repayment of the capital is deferred for an exceptionally long period.

If this financial proposition interests you, I shall be happy to call upon you by appointment.

Reference is kindly permitted to a number of well-known gentlemen including the executors of the late Dr. Faustus.

I am, dear Sir or Madam,
Your obedient servant,
S. MEPHISTOPHELES.

"H'm," muttered David to himself; I thought the old gentleman had gone out of business years ago. However, it might be amusing to follow this up; I'll probably find it's just an advertising stunt of some very ordinary Jew, who's overlooked the requirements of the Business Names Act, or possibly some Dago who really happens to have acquired that patronymic, and is using his ancestor's goodwill for what it is worth. I think I'll ring up."

He did so, and was so charmed by the cultured and musical voice which spoke to him that he fixed up an appointment in half-an-hour's time, at his chambers.

* * * * *

"A gentleman to see you, sir; he won't give his name, but says you're expecting him."

"That's right; show him in, please."

What David expected, he hardly knew; what he saw was a tall gentleman—eminently a gentleman, in the most fastidious sense of the term—dressed in a perfectly fitting morning suit and silk hat. He had a small pointed red beard, neatly trimmed, and as he removed his hat his hair stood up in a curious way at each side of his head, dimly suggesting horns. If he had a tail or cloven hoofs, these inconvenient appendages were concealed beneath his clothes.

Accepting David's invitation to be seated, the visitor came straight to the point. "I have a business proposition to make to you, Mr. Anderson. The Prince of Darkness is a gentleman——"

"Quite so," murmured David, "but you'll excuse my saying that I didn't expect anything quite so obviously Eton and Christ Church."

"As a matter of fact, I was not at either, though I have had clients at both, and have visited them many times professionally. The Prince of Darkness, as I was saying, is a gentleman, but he makes no claim to be a philanthropist. If I persuade you to do business, you may rely on the honourable fulfilment of my engagements, but must understand that it is a question of contract, not charity, and I shall expect equally faithful fulfilment of your part of the bargain."

"Naturally; what is your proposition?"

"I understand, Mr. Anderson, that you are not quite in the position of most young men recently called to the Bar; they have usually either some private means, or fathers willing to make them an allowance during the first few years. You, I am informed, were relying on the latter means of support, but your father's death within a few weeks after your call has not only deprived you of any allowance from him, but has disclosed that he himself had little or no private means apart from his earnings, which, of course, died with him. Is that so?"

"It is quite correct, though how you knew it, I don't know; the will is not yet proved, and the papers have therefore not yet been able to publish to an expectant world that Mr. George Anderson left estate of the gross value of £469, with net personalty £271."

"Consequently," continued the visitor, "your prospects seem black; you have at least average ability, but no influence to attract work, and no means of paying your way till it comes. May I have the pleasure of financing you—on the usual terms?"

"If by 'the usual terms' you mean a promissory note with a default clause making the interest something like 1,000 per cent, you may *not*," said David decidedly.

"My dear sir, my dear sir, you shock me; you pain me. I thought I said I never charged interest. No; what I propose is to guarantee you from this moment a decent living out of your profession, rapidly increasing to an Enormous Income, and, in addition, to ensure the fulfilment of all your material ambitions during this life. You must, of course, act reasonably; that is to say, you must not neglect work that offers, and must display reasonable competence and keenness in your profession. My powers of getting work are considerable—many solicitors are doing my work if they only knew it—but are not wholly fool-proof."

* At this date Parliament had not restricted the output of this class of fiction.

"I think I could promise all you've asked so far; but what do you get out of it?"

"The usual terms, my dear sir; when you die, I have the freehold reversion expectant on your life estate in your soul."

"Well, really, I think we might get on very well together, Mr. Mephistopheles. I've no objection. I don't remember offhand whether the new property law touches bargains of this sort."

"No; it seems to have been overlooked; when it's discovered I suppose we shall have another 'Act to amend the amendments in the amending Act of the Law of Property (Amendment) Act, 1925.' Well, that's a deal, then, Mr. Anderson; I'll be off to send you some work. Good morning."

"One moment, Mr. Mephistopheles, if you please. This is a contract not to be performed within a year, and it therefore requires a note or memorandum in writing to make it enforceable."

Mephistopheles looked annoyed. "Surely not," he said; "It is very unusual to have any written contract in these cases. I don't think it is within the Statute of Frauds, because you might die within the year. No; you needn't look alarmed; *I* shan't hasten your death; your soul is unripe at present: I should regard your premature decease as a calamity. In fact, I shall insure against it. My clients rarely die before seventy at the earliest; if they do they feel they have a grievance, and I like to satisfy my customers. Good morning." And he went out smiling.

David thought the room felt a little stuffy; there seemed a faint smell of sulphur from somewhere. He got up and opened the window, and saw by the clock on the Hall that it was lunch time.

When he came back to his chambers after lunch he found on his table a brief. "Mephistopheles is pretty smart," he thought. Then his face fell, for he noticed that the name on the brief was not his, but that of the rising junior in whose chambers he had a room. "Winchester Winter Assizes—Special Jury List. *Robinson* v. *Bournemouth Corporation.* Brief for the plaintiff, Mr. A. F. Tomlinson. Fifty guineas. With you, Mr. Silverside, K.C."

"Lucky devil," thought David, to be able to get fifty-guinea briefs on circuit; I suppose he wants me to make a note for him." He settled down to read the papers, and had hardly discovered that the plaintiff complained of being run over by a tramcar, when Grimes, his clerk, came in.

"Mr. Tomlinson wants you to go down to Winchester this afternoon, sir, to do that case; he's hopelessly fixed in the Lords to-morrow, and has two things likely to come on in the Court of Appeal the next day. The solicitors consent; you'll have nothing to do except sit behind your leader and take a note; he's going to be there all the time. Being a circuit case, you can't devil it, sir; it's your brief and your fee."

"'Fifty and one' for a first brief," thought David to himself. The hand of Mephistopheles was not obvious, yet the coincidence was unusual. That it should have been a circuit case, which by the strict rule of the circuit must not be handed to a junior to "devil" on behalf of the original owner, might have been an accident; it was an accident that all the men senior to himself in chambers, except Tomlinson, were members of another circuit; it might have been chance that this happened on the very day of his interview with Mephistopheles. Yet he wondered.

That evening, after the circuit mess at Winchester, he had a consultation with his leader, who indicated the lines on which he proposed to deal with the case, and said: "You won't have much to do; we've only three witnesses; I'll take the two big ones, and you can examine the policeman." But, alas, the morning brought a note from Silverside that he was in bed with influenza, and quite unable to get to court. The case was first in the list, and Anderson applied for an adjournment, but the judge pointed out that the list was a short one, and that it was not likely that Mr. Silverside would be fit to attend before the end of the assize. To adjourn it to the next assizes would cause very great inconvenience and expense, and he decided that it must proceed. "I've no doubt, Mr. Anderson, that you will do it very nicely," he added encouragingly. And Mr. Anderson not only did it very nicely, but persuaded the jury to give his client about twice as much damages as the solicitor had expected in his most optimistic moments.

* * * * * *

We will refrain from wearying our readers with details of David's career; from the day of his first case at Winchester his progress was one of those meteoric successes which happen about once in a generation. Never did he see Mephistopheles, but work poured in—and it was good work from good clients; the "no win, no pay" fraternity had no earthly hope of securing Anderson. In two years he was justified in refusing county court work, except at special fees. The only thing to suggest any unusual influence at work was that Anderson never lost a case; most beginners get sent about ten hopeless losers for every one with a chance of winning it; but Anderson never knew what it was to lose a case till his practice was so firmly established that it attracted work through natural as well as supernatural channels. Then some of the clients who came of their own accord lost their cases.

Eight years after his interview with Mephistopheles, David stood for Parliament as a Conservative. He was given, like most untried candidates, a perfectly hopeless Labour stronghold in one of the worst divisions of Glasgow. He won the seat by a record majority. In this the hand of Mephistopheles was a little more obvious; some of the newspapers even said that he had "the devil's own luck," and his defeated opponent at the declaration of the poll came unpleasantly near the truth when he said "A man who wasna in league wi' the de'il wad never hae got in as a Conser-r-vative." Some cynics, indeed, averred that the prevalence of Communism in the district made Old Nick feel so perfectly at home that he was working under ideal conditions.

Anyhow, Anderson had won the sensational victory of the election; he was invited to move the Address, and acquitted himself more than creditably. Three years later he took silk. In the next Conservative Government he was Attorney-General, and on the death of the Lord Chief Justice at an advanced age, Sir David Anderson, according to the usual precedent, succeeded him, and was raised to the peerage—still on the right side of fifty. Some people wondered that he should sacrifice the enormous income he could command at the Bar for the comparatively modest emoluments of the Lord Chief Justice. But Anderson was now a man of immense wealth, and the prospect of an office for life was more attractive than the strain of political life with the possibility of the Lord Chancellorship for a few years and then a back seat. "Besides," he reflected, "it is quite possible that I might serve for fifteen years as Lord Chief Justice, and qualify for my pension, and still be young enough to be offered the Chancellorship in a Conservative Government—a pleasant record to set up." And so it turned out.

Meanwhile, Lord Anderson's character showed no deterioration as the result of his dealings with Mephistopheles. His private life was above reproach, and he was universally and deservedly popular at the Bar. On the Bench he was respected as a good and painstaking judge, if not likely ever to be remembered as a very great one. There was nothing in the least Mephistophelean about him.

* * * * *

On his seventieth birthday Lord Anderson, now Lord Chancellor (he had resigned the Lord Chief Justiceship about five years earlier) received a letter in these terms:—

S. Mephistopheles,
Financial Agent.

My Lord,

Your Lordship having now completed the usual threescore years and ten, I have to remind you of your agreement made

with me some forty-nine years ago. I have fulfilled my part of the bargain, I trust to your satisfaction, and shall therefore be glad if you will give me an appointment to take delivery of your soul—for what it is worth to me, though I cannot but regret that you have not seen fit to squander your wealth in debauchery like most of my clients.

Awaiting the favour of your reply,

Yours faithfully,

S. MEPHISTOPHELES.

The Right Hon. The Lord Chancellor.

The usual response to letters of this sort, if we may believe the novel writers, is a wild panic, ending in a fatal attack of apoplexy. But Lord Anderson merely smiled softly. He had almost forgotten Mephistopheles; he had long ago made up his mind how to deal with this situation if and when it arose.

Next morning Mephistopheles went to his office with a cheerful air. There should be a letter from the Lord Chancellor giving him an appointment, and though Lord Anderson's soul would be very little use to him—it was doubtful whether he could ever get it to burn at all, and certainly he could not use it on his own staff, it was far too respectable—it would be worth while to substitute Lord Anderson's name for that of Dr. Faustus, which was rather ancient history, in his circulars. Besides, it would be a very bad precedent not to claim his rights. He was more than disgusted therefore to find, instead of the expected note from Lord Anderson, the following long letter from Messrs. Snuffins and Horton, the most discreetly respectable solicitors in all London.

Dear Sir,—Our client, the Lord Chancellor, has instructed us to reply to your letter of yesterday, addressed to him, which appears to have been written under some misapprehension. You may remember that at the interview to which you refer in your letter, our client expressed the view that this was a contract within the Statute of Frauds, and suggested a note or memorandum in writing. This you declined to give, and our client accordingly did not give one either, and never assented to the alleged oral contract. He still takes the view, in which we respectfully concur, that this alleged contract fell within the Statute, and he will rely upon it if necessary, as well as upon the Statute of Limitations.

Apart, however, from the Statute of Frauds, our client is not prepared to admit that you have done anything in pursuance of the alleged contract. He has neither seen you nor heard from you from that day till this morning, and has no evidence whatever that any single event in his life has been traceable to your agency. We must, therefore, ask for detailed particulars of your alleged services, showing when, where and by what means they were rendered.

The Lord Chancellor further takes the view that even assuming you could establish the existence of a contract not rendered unenforceable either by the Statute of Frauds or by the Statute of Limitations, and could show that you had performed your part of it, it would still be void as being contrary to public policy, if the consideration is not actually illegal under the obsolete but unrepealed Acts against witchcraft. He is of opinion, and we again agree, that no court would give effect to such a contract as you allege.

Our instructions, therefore, are to deny liability, and to inform you that we will accept service of any proceedings you may think fit to issue, and defend the same. Pending the decision of the court, we must ask if your solicitors will give an undertaking that you will not attempt to enforce the alleged contract; failing such undertaking, our instructions are to apply for an injunction forthwith, and we shall be glad if you will furnish us with the names of the solicitors who will accept service on your behalf.

Yours faithfully,

SNUFFINS AND HORTON.

S. Mephistopheles, Esq.

Mephistopheles was furious. In all his long experience he had never been treated like this. He'd get specific performance; he'd show this Lord Chancellor of his creation that he could beat him in his own Chancery Division. But could he? He reflected. It was true that the Lord Chancellor would not care to appear as defendant in an action called *Mephistopheles* v. *Lord Anderson*, but a good deal would have to happen before that. It would be ridiculous for him to conduct his own case; the points of law were novel and difficult, and he was a layman. He must have solicitor and counsel, but whether anyone of repute would act so directly and literally as *advocatus diaboli* he doubted. Anderson, on the other hand, could easily command the services of the best men in the profession. It was his word against Andersons, as to what took place at that meeting nearly fifty years ago; what chance had the Father of Lies of being believed against a Lord Chancellor? What a fool he had been to refuse a written contract! Of the legal points he could not well judge, but if he won in the court of first instance Anderson could certainly take it to the Lords, where his colleagues would be reluctant, to put it mildly, to impair the dignity of the highest tribunal in the land by adjudging the soul of its President forfeit to the devil.

On the other hand, to fight and lose would be disastrous; it would be the end of this class of business; he had several bargains of this sort maturing, and publicity for this case would mean that they would all be repudiated. After all, Anderson's soul would be a bit of a white elephant in Hell. On the whole, annoying though it was, he'd better drop the matter. The solicitors asked for an undertaking, though; he might give that, and then break it; it would at least annoy Anderson. He read Messrs. Snuffins and Horton's letter again. Curse the fellows! There were no flies on *them*. No wonder they'd got to the top of the tree. They didn't ask for *his* undertaking, but his *solicitors'* undertaking, a very different matter; no solicitor would run the risk of breaking his undertaking—at least, no solicitor whose undertaking Snuffins and Horton would accept. Then they'd start the proceeding for an injunction, and he was back where he started from, only defendant instead of plaintiff, with even less chance of resisting the claim and establishing his counter-claim.

Talk about "the cunning of the devil"; these lawyers were a thousand times worse; never again would he send out a circular to a barrister or solicitor, or accept one as a client. He was beaten, for the first time in his career, and he sat down with a sigh and penned the following letter to Snuffins and Horton:—

Dear Sirs,—In reply to your letter of yesterday, I consider your client has treated me abominably. However, in the words of Mr. Kipling, "he hasn't the soul of a louse," and I am not disposed to incur costs in the pursuit of my claim to so miscroscopical an object. I cannot help thinking that his best defence would be *de minimis non curat lex*. In the circumstances I propose to take no further action; if you choose to apply for an injunction I shall not appear, and you may take this letter as my formal consent to the order.

Yours faithfully,

S. MEPHISTOPHELES.

Messrs. Snuffins and Horton.

When this letter was forwarded by Snuffins and Horton to Lord Anderson, he read it through, folded it, indorsed it in his neat handwriting "Re M.—notice of withdrawal," and smiled gently to himself as he put it away in his desk.

Two days later an advertisement appeared in *The Times*, offering "commodious West End offices to let, suitable to financial agent; present tenant retiring from business."

Mr. ALFRED WILLIAM BURCHELL, solicitor (Burchells, 5, The Sanctuary, Westminster), has been re-elected Master of the Painters' Company for the ensuing year.

Indemnities Commissions.

[Contributed.]

The problem of the payment by the State of compensation for injury to the property or persons of individuals has presented itself in history in a variety of forms.

1. In the course of most wars between independent sovereign States, enemy, subject and neutral property is damaged by military operations, goods are requisitioned for military use, the liberty of action of individuals is curtailed. The question of compensation for such matters is generally regulated by the ultimate treaties between the belligerents, or by special conventions where the rights and liabilities of neutrals are involved. To this category belong the treaties that followed the American War of Independence, the Anglo-American War of 1812, the war between North and South, the Alabama Convention, and the reparation provisions in the modern treaties between the Entente Powers and Germany, Austria, Hungary and Bulgaria respectively.

2. The municipal law of many countries imposes upon local authorities the duty of paying compensation for malicious damage done to property in the course of riots. In England, this liability was enforced up to 1886 by an action against the hundred. Since that date, under the Riot Damages Act, 1886, it has been transferred to the police rate. In Ireland, under a series of enactments commonly described as "the Malicious Injuries Code," a remedy was given, within certain limits, as regards both damage to property and personal injury, against the county council. In France*, up to 1914, the State was not legally responsible to the victims of political disturbances. If an indemnity was contemplated, it was necessary to obtain from the Legislature, as was in fact done after the assassination of President Carnot at Lyon (Law of 4th December, 1896), the necessary authorisation and credits. The communes stood in a less favourable position. The Law of 10 Vendémiaire, Art. 4, contained minute regulations for reparation, in respect of injuries done, by open violence, by mobs, whether armed or not, to persons or property, and imposed upon the communes the obligation to make good the damage. If the mob, which had caused the damage, was composed of inhabitants of the commune on whose territory the wrongful act had been committed, the commune was responsible on the principle of "social solidarity," and could not exonerate itself by proving that it had not been guilty of any actual default. If, on the other hand, the riotous assembly had consisted of persons who were strangers in the commune, the latter could free itself from all liability by showing that there had been no blameworthy conduct on its part. This law, which remained in force till 1884, was interpreted in a spirit very different from that which had inspired it. Little by little, the "jurisprudence" refused to fix on the inhabitants of the communes liability for acts which they had not committed and limited the responsibility of the commune to cases in which, although it had had the control of the police, it had failed to exert the communal authority. The Municipal Law of 1884, like that of the 10th Vendémiaire, imposed in principle on the communes liability for damage done, whether by armed violence or not, within their territorial limits, but permitted them to discharge themselves from all responsibility, irrespective of the question whether the wrongful acts complained of were the work of strangers or not, on proof that they had taken all available measures to prevent the mischief, or that they had not the police or armed forces at their disposal. Since 1914 the responsibility for malicious injuries committed by riotous assemblies has been apportioned between the State and the communes. The Law of 16th April, 1914, while maintaining in principle the liability of the commune for damage done within its area, profoundly modified the incidence of that liability. The responsibility is suppressed altogether where the commune had not the control of the police—a clause completely exonerating the large cities in France—or, had done all in its power to prevent the damage. In principle, the State pays one-half of the indemnity and costs. But it may re-claim up to 60 per cent. of that half against a commune that has neglected its duty, while the commune on its side may make a similar claim against the State if it had not, at the critical period, the direction of the police, or can show that it took all possible measures to prevent or repress the disturbances. The State and the commune have, besides, a right of recourse against the authors of the disturbances and their accomplices.

* Berthelemy, Droit Administratif (Ed. 1908), p. 533.

A similar problem presented itself to the Upper Silesian Plebiscite Commission. Under the law in force at the time of the Commission's arrival, compensation for damage by riot was payable by the commune. A new law had since been passed in Germany under which the cost was to be borne by the Central Government. This law had not been applied to Upper Silesia. Although, for reasons to be mentioned hereafter, the Plebiscite Commission did not, in the long run, deal with the question of compensation, the Commissioners took the view that they could not compel the commune to bear the cost of damage so great as had often occurred to castles, bridges, etc., situated in its area, as such damage was mostly caused by armed forces not resident in the locality. Accordingly it decided, in virtue of its duty to interpret its powers that the compensation for damage due to the riots of 1921, should be met out of the funds of the territory.

3. An intermediate class arises where in the course of—
   (*a*) general rioting, or
   (*b*) civil war,

damage is done to property or persons on a scale with which the ordinary municipal law is incapable of coping, and in which, therefore, the Government or Governments concerned create special machinery for the assessment of compensation. The special Indemnity Commissions appointed after the Panama Riot of 15th April, 1856, the disturbances in China of 14th December, 1856, and the Egyptian riots of 1919-1921, are examples of (*a*). The Compensation Commission constituted by the British and Irish Free State Governments in 1922 to assess compensation for malicious injuries to property in Southern Ireland during the Anglo-Irish Civil War may be taken as an instance of (*b*).

The hypothetical situation that has to be faced may be summarised thus. Civil war or prolonged rioting has left in its wake widespread destruction of property. The State finds itself confronted by an enormous volume of claims for redress. The Egyptian Indemnities Commission had to deal with 11,000, the Compensation (Ireland) Commission with over 41,000, such claims. Recourse to the ordinary tribunals is out of the question. The disturbances have put their machinery out of gear, and, even if the fact were otherwise, more rapid action than is to be expected from the courts of law is called for. A tribunal *ad hoc* has to be constituted. How should the problem be approached, in the first place by those whose duty it is to create the tribunal, and secondly, by the members of the tribunal itself?

The governing factors in the situation are these:—

(i) The community is not the actual wrongdoer. Its responsibility is vicarious;

(ii) Compensation cannot be assessed with mathematical precision. The justice that claimants have a right to expect must take the form of what has often been compendiously characterised as "a square deal."

(iii) The utmost expedition consistent with the attainment of that end, in the disposal of claims, is essential.

These principles are of importance from the standpoint both of the terms of reference to the Compensation Commission, and of the proceedings of the Commission itself.

And first, as regards the instrument of appointment.

The classes of damage, for which compensation may be awarded should be clearly defined. The compensation to be allowed should be what is "fair and reasonable" in all the circumstances of each case. The application of this standard will generally exclude "punitive" or "vindictive" damages. The question how far "consequential" damages may be taken into account should not be lost sight of. In this connection it may be pointed out that the term "consequential" is not synonymous with "indirect." Loss flowing naturally and necessarily from a material or physical injury is really a "direct" result of that injury and cannot be shut out in the computation of compensation which is to be "fair and reasonable." An express exclusion of "indirect" damage from the competence of the Commission will suffice to debar it from considering damage that is too remote, while leaving it free to have regard to losses that are directly consequential on the actual injury which gives rise to the claim.

The Commissioners appointed under the Convention of 8th November, 1858, to administer the Chinese Indemnity Fund in connection with the disturbances of 14th December, 1856, were directed to disallow all claims "except those for destruction of actual property."

The scope of such terms of reference as we are now considering is seldom restricted in the long run to injuries of a purely malicious character. Both the suppression of general rioting and civil war, involve military action, with resultant damage of various kinds. Requisitions are imposed. Premises are occupied for military use. Official reprisals are carried out. Property is destroyed or injured in the ordinary hazards of war. Buildings are pulled down or burned as a matter of military necessity. It is of paramount importance that any provisions in terms of reference for the payment of compensation in respect of such heads of damage should be expressed in language admitting of no doubt. Requisitions and occupation of premises, of course, present little difficulty. They must obviously attract compensation, but official reprisals have acquired a certain degree of international recognition, and the general rule of international law appears to be that no claim will lie, as a matter of strict right, against a belligerent state by an individual, enemy, subject or neutral in respect of property damaged or destroyed by military operations, or as an act of military necessity (*Luxon Sugar Refinery Co. Case*, McNair & Lauterpacht's Ann. Dig. 1925-26, p. 225). If indemnities are to be awarded for such injuries, the subject must be dealt with expressly in the terms of reference. In handling it, the deadly sin of vagueness of language should be resisted with all diligence.

Wherever the conditions of the country permit, the terms of reference should fix a time limit for the presentation of claims.

It is generally undesirable to prescribe a date for the completion of the work of an Indemnities Commission. This course was adopted in the case of the Panama Riot Commission, 1857, which was required "to terminate its labours in nine months from, and including, the day of its organisation." The time proved insufficient and had to be extended. In this connection reference may be made to the Upper Silesian Plebiscite Commission. One of its incidental duties was to assess, before the prescribed transfer of territory to Germany and Poland respectively, compensation for damage done during the riots of 1921. Committees set up by the Germans in most, if not all, parts of the area, had already assessed the claims for compensation, and in necessitous cases made advances from a fund provided by the German Government. The work of these committees could not be undone. But it was felt that that work should be checked, and accordingly fresh committees, on which the Commission and the Polish section of the community were represented, were appointed. The checking operations proceeded slowly and were not completed at the date of the transfer of territory. The Commission suggested that it should continue to function. But the German Government contended that the Allied Governments having been responsible for the maintenance of order in Upper Silesia at the date of the riots and having refused German assistance, were liable for the damage and should bear the expenses involved. The Commission, therefore, made no arrangement with regard to the compensation, and it was left to the German and Polish Governments to take such steps in the matter as they thought fit after the transfer of territory.

Before passing from the duration of Indemnities Commissions, it may be interesting to mention the periods over which the work of some of these tribunals has extended, and the number of claims dealt with in such periods.

Anglo-American, under Treaty of 8th May, 1871—	
First sitting 26th September, 1871 Last sitting 25th September, 1873	497 claims.
South African Deportation Commission, 1901—	
First sitting 30th April, 1901 Last sitting 13th November, 1901	227 claims.
Central Judicial Commission, 1902, after the Boer War—	
Appointed 30th October, 1902 Final Report 28th February, 1906	63,079 claims.
Egyptian Indemnities Commission, 1919—	
First sitting 25th November, 1919 Last sitting 29th January, 1922	11,000 claims.
Compensation (Ireland) Commission, 1922—	
First sitting 19th May, 1922 Final Report presented 31st March, 1926.	41,382 claims.

The Compensation Commission should be invested with power to "inquire into and determine" all cases that come before it. The expression "*hear* and determine" should be avoided. To impose upon a tribunal charged with the task of deciding many thousands of urgent claims the duty of hearing each of them as a court of law, is to foredoom its efforts to failure. From the decisions of the Commission there should be no appeal. If possible, it should be the paymaster of the sums awarded. The difficulty of estimating beforehand the amount of money that will be required to meet the awards was dealt with in Egypt in 1919 on the following lines. A sum of £E.1,000,000 was earmarked for the payment by the Commission of the indemnities awarded by it. In the earlier stages of its work, the payments made by the Commission to claimants consisted solely of advances on its awards, not exceeding in any case one-third of the total amount awarded. This proportion was raised later on to two-thirds. Ultimately, when it became clear that recourse to a *pro rata* distribution would be unnecessary, every award was paid in full. The total sum awarded was £E.665,854.

The Commission should be its own master in all matters of mere procedure. In particular, it should have power to provide itself with the necessary staff, and to appoint the requisite number of investigators.

So much for the instrument of appointment. We come now to the operations of the tribunal. To these, the principles above mentioned apply with even greater force. What the claimant desires is "a square deal," speedily rendered. We all remember ANATOLE FRANCE'S brilliant sketch of the Commission set up in Haiti to devise a national memorial to a number of citizens who had been shot for participation in an insurrection in that country. The President, who had himself been responsible for the executions, decided that the seat of the Commission must be in Paris. Viewed through the magnifying glass of the seductions of that delightful city, the difficulties of the inquiry proved insurmountable. A sculptor, who was consulted on the subject, protested that he could not even submit an adequate design for the memorial, much less take up his chisel to commence the execution of the work till he had completed the study of 1,500 volumes. The viability of a body nurtured in such an atmosphere was obviously incalculable. "Apres vingt ans," says ANATOLE FRANCE, "la Commission fonctionnait encore."

The operations of an Indemnities Commission have to proceed upon different lines. "*Bis dat qui cito dat*" must be its watchword. Its work, in the main, will be administrative rather than judicial, and should, therefore, be carried out in the ordinary administrative fashion. The limelight of public sittings and newspaper reports should be avoided. The task of locally inquiring into and ascertaining the relevant facts may be committed, in the first instance, if a very large body of claims has to be dealt with, into the hands of expert investigators—surveyors, architects, engineers, land agents, etc., according to the subject-matter of the claims—whose duty it should be to report to the Commission the results of their enquiries. Each report should contain a concise statement of the facts and an expression of the investigators' opinion and the amount of the compensation, if any, which they recommend. The decision on every claim must, however, be the act of the Commission itself. If the work of investigation is competently and tactfully done, it will be found that in a considerable percentage of cases the claimant is prepared to accept the investigators' recommendation, which should ordinarily be disclosed to him before it is communicated to the Commission, and that no further inquiry is necessary in order to enable the Commission to dispose of the claim. Where, however, the investigators differ, or the claimant refuses to accept their recommendation, and in all cases in which the magnitude of the interests, or the difficulty of the questions of fact or law involved render it desirable, the claimant should have free access to the Commission itself. An informal interview will ordinarily suffice. But the Commission must be prepared to grant formal hearings where the circumstances call for that procedure, inspecting the locus, if necessary, and taking evidence in the usual way. The atmosphere of such hearings should, however, be that rather of a private arbitration than of a public trial in a court of law. No general *right* of appearance before the Commission or its investigators should be conceded to the legal profession. But what is not admitted as a right should be granted in all appropriate cases as a privilege. The assistance of solicitors is very frequently indispensable to investigators, and from time to time the appearance before them of members of the Bar for the purpose of elucidating the facts on which points of law depend is fully justified.

Perhaps the most difficult question of principle that besets the path of an Indemnities Commission is that involved in what is known as the doctrine of "the exhaustion of legal remedies." In order to bring his claim within the jurisdiction of the Commission, the applicant must show either that he has exhausted the remedies afforded by the law of the State, of whose action, or of the action of whose subjects, he complains, or that he has a reasonable excuse for his failure to do so: *Montano's Case*, Ralston, "Law and Procedure of International Tribunals," para. 129). Sometimes, as in the Arbitration Convention, 1923, between the United States and Mexico, this requirement is expressly excluded. Where the duty of "exhausting" available local remedies is dispensed with, the claimant is under no obligation to "resort" to them in any way (*Illinois Central Railroad Case* [1926], McNair and Laut., Annual Digest, p. 215), and the doctrine has in all cases to be rationally applied. It may bar a claim, or it may be only an equity of which the Commission has to take account. The relevant considerations are these. Did the local law give a remedy, complete or partial? Did the courts, by refusing to hear the claimant's case, or by undue and inexcusable delay in disposing of it (*Cotesworth and Powell's Case*, Ralston, "Law and Procedure," para. 115), deny him redress? Ordinarily, a claimant is not in a position to say that justice, has been withheld till he has endeavoured to obtain it. On the other hand, justice may be as much denied when it may be absurd to seek it by judicial methods as if denied after being so sought; and "a claimant in a foreign state is not required to exhaust justice in such state when there is no justice to exhaust" (Moore, "International Arbitration," VI, 677).

Sex and The Law.

[Contributed.]

The Lambeth Conference has made pronouncements on divorce and contra-conception, and papers on similar subjects have been read at various clerical assemblies. Perhaps, therefore, the time may be convenient for the consideration and reconsideration of such matters from the legal point of view.

Ecclesiastical law, civil law, and criminal law are alike concerned with sex relations, though since 1857 our Ecclesiastical courts have had jurisdiction over clergymen only. These can be monished, suspended, deprived of their livings, or unfrocked by them for practically every kind of sex offence, whether punishable by our criminal law or otherwise, proceedings usually being taken under the Clergy Discipline Act, 1892. For a general discussion as to the range of the Act, see *Sweet* v. *Young* [1902] P. 37, where a clergyman was deprived of his living and unfrocked for conduct which, though highly unworthy of his cloth, was far from criminal.

Since 1857 the Divorce Court has taken over the whole matrimonial jurisdiction of the old Ecclesiastical Courts, together with the former jurisdiction of the King's Bench, to award damages for *crim. con.*, and has also had conferred on it an original power to pronounce divorce absolute. It has thus exclusive jurisdiction in respect of adultery, which is not now a punishable legal offence. The possibility may be suggested that the transfer of jurisdiction left the Church Courts the power of discipline against, and to enjoin penance for, acts of immorality committed by bachelor with spinster. For practical purposes, however, this may be disregarded. Even in the early part of the nineteenth century such power appears only to have been used to break up incestuous unions, as in *Burgess* v. *Burgess* (1804), 1 Hagg. Com. 384, and *Chick* v. *Ramsdale* (1833), 1 Curt. 34. The latter case, where the parties were in the relation of brother-in-law and deceased wife's sister, would not now be regarded as one of incest at all. This offence remained without punishment from 1837 until the Punishment of Incest Act, 1908, was passed in respect of such intercourse between parents and children, brothers and sisters, and grandparents and grandchildren related by blood but not by marriage. This law may be generally approved, but incest must, to some extent, be an artificial crime, for it has to depend upon an arbitrary table of affinity. Roman Catholics can obtain dispensations for uncles to marry nieces whereas the marriage of first cousins may be condemned under some systems.

Certain gross sexual crimes can be committed by men only, for, although on two conceivable counts, a woman might be indicted for an unnatural offence under s. 61 of the Offences Against the Person Act, 1861, in practice it is used solely against men. Similarly, men only are indictable for rape and sexual offences against young persons and children. As a minor matter, probably a woman unaccompanied by a man cannot even be charged with indecent exposure: see note, Vol. 73, p. 505.

In considering sex law as a whole, the matters of contra-conception and abortion may, perhaps, properly be included. Contra-conception was practised in very ancient times, and a record of the most obvious and primitive method will be found in the Book of Genesis. Modern discoveries have made it safe and easy. It has been regarded as an Ecclesiastical offence, but the Lambeth pronouncement indicates some possible relaxation of attitude. Statistics show that it is widely practised, even in Roman Catholic countries, where the religious veto on it is positive. Obviously, punishment of it by ordinary process of law would be quite impracticable, so further discussion would be academic.

Moses punished abortion (see Exodus xxi, 22-23) in its then crude form of violence to a pregnant woman. Blackstone does not mention it, but it was probably a common law offence. Hawkins refers to it as a "great misprision": "Pleas of the Crown," 8th ed., pp. 94-95. It has been

established as a statutory offence for well over a century. In Russia under its present Government it appears not only to be countenanced, but even state-aided. By the ancient law of Rome, a father could reject even a living infant, and so condemn it to death. Public opinion, however, is well content with our present law, and regret may be expressed that this grievous crime is so common and so frequently unpunished.

To render the discussion complete, two other offences must be mentioned, namely, solitary immorality and solicitation of chastity. The former is usually an offence of adolescence, and might be a good reason for expulsion from school, but is not punishable by law. Solicitation of chastity is punishable if the offender is a common prostitute, and indirectly so by a charge of insulting behaviour if the offender is a man addressing a woman. A man addressing a man can be more severely punished under the Vagrancy Act, 1898, but the experiment of charging a man under this Act for annoying a woman does not appear to have been made. A woman who is not a prostitute can solicit anybody without legal offence.

Marriage precludes a wife charging her husband with rape, but she is entitled to protect her person, with any needful force, against unnatural practices or the communication of disease. On the other hand, the rights she concedes to her husband on marriage cannot directly be enforced by any civilised law, and are not even indirectly enforced by ours, for *R.* v. *Jackson* [1891] 1 Q.B., has firmly established her right to desert him whenever she pleases.

The law now being fully stated can be considered in the light of the times. In the first place, it is certainly open to criticism as to the very uneven incidence of retribution for adultery. Thus a husband, for one lapse, not involving his wife in the possible maintenance of another woman's child (which sharply distinguishes his offence from a wife's) may have permanently to forfeit a third of his income to his wife, who is relieved of all reciprocal duties to him, while a rich co-respondent who breaks up a home may have to pay a cheque involving him in no practical inconvenience, and thereafter go free. In fact, about thirty years ago there were two men of wealth and position, each of whom had made four appearances at least in the Divorce Court, either as respondent or co-respondent. Libertines of this kind could only be deterred by imprisonment. Adultery used to be an offence against our law punishable with death (even in the middle of the seventeenth century) or mutilation, and it is an offence against the criminal codes of some American states and India. It would hardly be possible to restore it as an offence under our law, but the adultery which resulted in the breaking up of a home, or the communication of disease to an innocent spouse, or, in the case of a wife, threw doubt on the paternity of a child, might be made punishable. There would be the obvious objection that this would render punishment dependent on a result which had nothing to do with the offender's guilt, but the same applies to murder, for a would-be murderer is not hanged if he is clumsy enough to fail in his purpose.

Turning to the criminal law, it is open to the criticism that homo-sexuality is allowed to one sex, and very sternly forbidden to the other. Such offences committed by males were tolerated by the laws of Greece and Rome, while those of females were reprobated. There is, however, no suggestion that our criminal law in this respect should be altered, though it may not be easy to see why the guilt of the masculine sexual pervert requires heavy punishment, while the woman escapes altogether. The subject is a very difficult one, as any doctor will testify, and it seems reasonably clear that we have not yet found the ideal solution to deal with a small minority, whose mental malady appears to be incurable, and who may otherwise, in the view of many, be good citizens.

The problem of dealing with solicitation is another which cannot be said to be happily solved by our law. In a neighbouring country, women are given licences to promenade in certain streets at certain times to meet men, and are heavily punished if they exceed that licence. Thus those who seek them know where to find them, and those who wish to avoid them also know how to do so. A large number of Englishmen may in their hearts think this is a sensible plan, but it is hardly conceivable that it will be adopted here. Possibly the problem will solve itself otherwise, for the spread of the knowledge on the part of both sexes has, without doubt, in recent times resulted in a marked diminution in the numbers of women whose calling is obvious, and the policeman may some day find that the professional street walker has disappeared for lack of clients. That day, however, is not yet, and the difficulties discussed in our article "Police Evidence and the Public," 71 Sol. J., 795, still remain.

The one clear lead which the bishops have given to the legislature and the people is that the sex function is to be regarded as a high manifestation of life on earth, and no longer as something wicked or sinful, to be indulged furtively or sternly suppressed. In this light the law should be so framed as to bring the people, and especially the young, living under it, to understand the need to keep the ideal at its highest and cleanest, and the degradation involved in pollution and misuse. And when the shining light of that ideal is in the mind, the sexual offence will be abhorrent.

The Finance Act, 1930.

By RONALD STAPLES.

III.

Besides the major alterations in the law relating to income-tax which have already been considered and the changes in surtax administration which will be dealt with in the concluding article of this series, the 1930 Finance Act introduces many minor amendments. For the smaller ones the curious are referred to the text of the Act itself as they are straightforward and it is only proposed to deal with three of the minor alterations in this article—relief on life assurance premiums, rate of deduction of tax, and double taxation relief.

In the Finance Bill, as presented to Parliament by the Chancellor of the Exchequer, considerably more sweeping alterations were proposed in respect of amounts paid by taxpayers in life assurance premiums than have finally found their place on the Statute Book. In fact, the only alteration made is the insertion of a new paragraph into the rules laid down by s. 32 of the Income Tax Act, 1918. The change is necessitated by the new rate of reduced rate relief introduced by the Act which is now to take effect in respect of five-ninths of the tax remaining chargeable after the deduction of the usual personal allowances (maximum of £250).

Had no change in the life assurance relief been made, individuals with smaller incomes would have gained an exceptional relief with the increase of the reduced rate relief from one-half to five-ninths of the standard rate; the taxable part of the smaller incomes would have been charged for 1930-31 at the rate of 2s. 2d. and would have received life assurance relief at 2s. 3d.

As the Bill passed through its various stages it was suggested that the relief should be given at 2s. 3s. and 4s. instead of at one-half, three-quarters and the full standard rates; but since this would have involved a reduction in the benefit of the relief to all but the smaller income, the new sub-s. (*f*) was passed in its present form. Shortly, its effect is as follows:—

(*a*) If the taxable income of a taxpayer is less than £250 (and thus liable to tax at four-ninths of the standard rate only), the allowance in respect of the life assurance premiums is restricted from one-half to four-ninths of the standard rate on the amount of the premium.

(*b*) If the taxable income of a taxpayer is greater than £250, the half-rate allowance will only be given on premiums

to the extent that such premiums do not exceed the amount by which the taxable income exceeds £250. So far as the premiums are greater in amount than the *excess* over £250, the allowance will be at the rate of four-ninths only.

Section 12 of the Finance Act deals with difficulties which face public companies and the other persons paying interest or dividends at a date so near the Budget date, yet after 5th April, that they are unable to deduct tax at the proper rate. Previous Finance Acts have already dealt with the problem in a somewhat perfunctory fashion and s. 12 was introduced to settle the question for once and for all.

It must be borne in mind that when a Budget is introduced a resolution is passed in Parliament carrying statutory effect under the Provisional Collection of Taxes Act, 1915, which re-imposes the income-tax. Obviously different difficulties arise in the cases of ordinary and preference dividends. An ordinary shareholder can have no contractual right to any particular rate of dividend on his shares, for the company is free to apply much of its profits on dividends it sees fit. It makes no difference to the company at what rate incor e-tax is deducted on payment of dividends ; it distributes the same gross amount irrespective of the rate in force at the time. Hence it was comparatively easy to arrange for the position with regard to the rate of deduction of tax on the payment of ordinary dividends. Where a dividend, other than a preference dividend, is paid, and income-tax is deducted at a greater or less rate than the standard rate for the financial year in which the dividend becomes due, the net amount actually paid is to be deemed to be the net amount of a dividend from which the correct rate of tax has been deducted for the purposes of a total income computation.

In the case of preference shares, the matter is necessarily rather more complicated, because the shareholder, by virtue of his contract, is entitled to a fixed rate of interest. It follows that the position can only be remedied by requiring the company to make a subsequent adjusting deduction. Hence s. 12 provides that where the standard rate for the year is *lower* than that charged for the preceding year, any deduction of tax from interest or dividends on preference shares shall be legal if made at the rate in force for the previous year. Any over-deduction which is made must be adjusted by a reduction in the amount of the tax deducted from the next payment (the excess tax not to be retained for more than twelve months after the passing of the Finance Act). It is further provided that any such adjustment assures to the holder of the preference shares at the time of the payment of interest which has been so adjusted, irrespective of whether he held the shares at the time the over-deduction was made or not.

Section 17 introduces new provisions with regard to the relief of persons who suffer taxation in more than one country in respect of the same profits ; provision is made to assist persons in certain cases to whom income arises in the United Kingdom through an agency. Two classes of persons are affected—those to whom profits or gains arise directly or indirectly where they :

(*a*) Reside abroad and the profits or gains arise in respect of an agency in the United Kingdom.

(*b*) Reside in the United Kingdom and the profits or gains arise in respect of an agency abroad.

In either case reciprocal relief must be given by the country concerned. Restrictions on this relief are, however, made to apply ; no exemption from United Kingdom income-tax will be granted where the profits or gains—

(1) Arise from the sale of goods from a stock in the United Kingdom ; or

(2) Accrue to a person resident in the United Kingdom ;

(3) Accrue to a person not resident in the United Kingdom through any agency, branch or management in the United Kingdom where the agent has authority to negotiate and conclude contracts.

Hire-Purchase Frauds

With particular reference to the position of Auctioneers and Bailiffs.

By JOHN STEVENSON, Barrister-at-Law, General Secretary, Incorporated Auctioneers and Landed Property Agents.

As genesis, it may be as well to re-state here part of s. 1 of the Larceny Act, 1916, which provides that—

"a person may be guilty of stealing anything capable of being stolen notwithstanding that he has lawful possession thereof, if being a bailee, or part owner thereof, he fraudulently converts the same to his own use or to the use of any person other than the owner."

Perfectly clear ! Unfortunately, however, from the point of view of the innocent hire-purchase trader, innocent auctioneer, or bailiff, the position may be obscure in the extreme, as the following attempts to show.

In General.

One of the oldest, but still most important, decisions of the courts in regard to hire-purchase frauds was the case of *R.* v. *Macdonald* (1885), 15 Q.B.D. 323, which was eventually argued before the "Old Common Law Assembly of Judges"—no less than thirteen of them !—who held by eight to five that Macdonald was rightly convicted for that he, being a minor person, having hired furniture on the "hire-purchase" system, and only having paid four instalments thereon, wrongfully sold the goods without the knowledge of the person of whom they were hired. It should be noted that the judges came to this decision in spite of their holding concurrently that the contract itself was void by reason of Macdonald's minority.

Subsequently the House of Lords, in *Helby* v. *Matthews* [1895] A.C. 471, affirmed, in effect, this ruling, as such hire-purchase agreements are "agreements to let with option of purchase." It is necessary, however, to distinguish this case from *Lee* v. *Butler* [1893] 2 Q.B. 318, where, in law, possession had passed to the hirer, and thus he could give a good title under the Factors Act, 1889, to persons taking from him in good faith.

It is not, perhaps, unfair at this point to observe that the experience of a number of criminal proceedings for fraudulent conversion of hire-purchase goods indicates that juries seem extremely loth to convict. Possibly they take the view that as a person has undoubtedly, by his instalments, paid *some* part of the purchase price, it would be inequitable to find him guilty of stealing the *entire* article !

The Agent's Position.

So much for the position of the two principals. How is an agent—often an auctioneer, often a pawnbroker—civilly, as distinct from criminally, affected ? Principally it would appear—

(1) By taking the goods for sale (or in pawn).

(2) When acting as a bailiff.

Relative to (1), the liability, or otherwise, of the auctioneer for conversion—in spite of what Mr. Justice Salter is reported (*vide Estates Gazette Digest*, 1925, p. 325) to have said in giving the Divisional Court's judgment in *Benton* v. *Campbell, Parker & Co., Ltd.*—an auctioneer should always try to safeguard himself, when accepting goods for auction, by making inquiries as to title. Though admittedly this must often be difficult, or even impossible, it is a precaution particularly worth taking where there is any semblance of suspicion (or should have been suspicion) in the auctioneer's or other agent's mind, either at the time the goods are accepted or at any time between then and the sale taking place.

In considering this advice, that principle of law should be borne in mind which runs—

"Whenever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it."

Those, however, who are of the opinion that there is no duty on their part to make such inquiry may take to their comfort *Shenstone* v. *Hilton* [1894] 2 Q.B. 452, where an auctioneer who had sold a piano, being unaware that it was the subject of a hire-purchase agreement, and that some of the instalments were still unpaid, was held not liable for conversion. There is considerable doubt, nevertheless, whether this decision is now good law, in view of the vast increase of hire-purchase trading during the thirty-six years that have elapsed since it was heard.

As to (2), all bailiffs ought to make themselves aware of the provisions of both the Lodgers' Goods Protection Act, 1871, and the more recent statute, the Law of Distress Amendment Act, 1908. Principal cases arising out of the 1908 Act are *Gamage* v. *Payne* (1925), 42 T.L.R. 138; *Jay's Furnishing Co.* v. *Brand and Co.* [1915] 1 K.B. 458; and *Hackney Furnishing Co.* v. *Watts* [1912] 3 K.B. 225. For the possible effect on both bailiff and auctioneer *Smart Bros.* v. *Holt* [1929] 2 K.B. 303 (*Estates Gazette Digest*, pp. 192, 193), is of peculiar interest, as showing how necessary it is for persons executing a distress, or subsequently selling goods which form a part of the distress, to be acquainted with the wording of any hire-purchase agreement that may be in point. In that case both bailiff and auctioneer were cast in damages for wrongful conversion of the furniture dealers' goods.

To sum up briefly, "the whole law and the prophets" relating to agents and hire-purchase is: "Be wary! Find out all you reasonably can, and refuse to handle any 'doubtful' goods." In this matter at least "Safety first" is an excellent maxim.

Dominion Appeals to the Privy Council.

According to one newspaper, the British Government is prepared to agree that any Dominion desiring it shall be entitled to abolish the right of its citizens to appeal to the Privy Council against a decision of its own Supreme Court. This conclusion may perhaps be somewhat premature, but the matter appears at least to be under consideration by a committee of the Imperial Conference, with the Lord Chancellor as chairman, and including Dominion Prime Ministers and Ministers, and legal and constitutional experts.

The right of appeal to the Privy Council dates almost from the earliest days, when Englishmen, adventurous but loyal to their country, planted her flag and created settlements of their own in America and elsewhere. In the period between Elizabeth and Charles II, indeed, the Privy Council appears to have exercised the administrative functions now performed by the Colonial Office in respect of Crown Colonies, together with the judicial duties still surviving to its Judicial Committee. Thus Fitzroy, "History of the Privy Council," pp. 211-2: "Questions came before the Council by way of petition either of individuals or of corporate bodies, and it was thus largely concerned with cases of private interest. Matters of public importance were not overlooked . . . boundary disputes and charges against State authorities were examined without stint, and as a rule settled with praiseworthy exactness." And again (p. 221): "The judicial appeals recorded are mostly from the decisions of a Colonial Governor and Council sitting as a Court of Appeal or Chancery and were often successful." The Council, however, treated these decisions with respect, even if it over-ruled them. It may be of interest to note that, even in those days, Rhode Island objected to the jurisdiction.

One of the earliest references to it in any law report is contained in the case of *Fryer* v. *Bernard* (1724), 2 Peere Williams, 261. This concerned the jurisdiction of the English Court of Chancery to direct sequestration in Ireland, but the Lord Chancellor observed, when counsel stated that the court had exercised such jurisdiction in North Carolina, that he doubted much whether such sequestration should not be directed by the King in Council "where alone an appeal lies from the decrees in the Plantations, for which reason it seemed that in such case the plaintiff ought to make his application to the King in Council, and not to this court."

The Judicial Committee was created by Act of Parliament in 1833, on a preamble that it was expedient to provide for a more effectual hearing than by a committee of the whole Council, and its constitution has been altered from time to time by various Appellate Jurisdiction Acts, that of 1908 being the most important in recent times. The right of the Crown to entertain an appeal from overseas and refer it to the Privy Council or the Judicial Committee has been treated as absolute, but capable of being abolished or modified with the Sovereign's consent, as expressed by Act of Parliament or otherwise. A well-known example is afforded by clause 74 of the constitution of Australia, contained in the schedule to the Commonwealth Act of 1900, as to the rights of the component states of the Commonwealth *inter se*, though otherwise the right to grant special leave to appeal is preserved. This right is also dealt with and preserved in the South Africa Act, 1909, s. 106. In Ireland, the validity of the decisions of the Judicial Committee is maintained by s. 53 of the Government of Ireland Act, 1920. The legislature of Southern Ireland, however, appears ready to nullify this section by passing retrospective Acts to deprive successful appellants to the Privy Council from their courts of the rights to which the Council has advised they are entitled.

The law was clearly laid down in *R.* v. *Bertrand*, L.R., I.P.C., 520, that the Crown has an inherent prerogative right to entertain appeals from the overseas portions of the Empire, both in civil and criminal cases, unless that right has been renounced by statute or charter. The right, of course, is less of value to the Crown than to the subject as litigant. If he deems that he is oppressed, and that he suffers injustice in a local decision, he is entitled to approach the Sovereign as the fountain head of justice. It hardly seems possible to avoid a reference to the appeal unto Cæsar in another mighty Empire, an appeal again open to its humblest citizen. If, however, the unsuccessful appellant suffered death in the latter case as the result of giving Cæsar unnecessary trouble, it may be urged that our dismissal with costs in such event marks a distinct humanitarian gain.

Though the right to hear may be absolute, the full right to be heard on the merits, which is enjoyed by the appellant from the Court of Appeal to the House of Lords, is by no means so, but is hedged about and guarded to prevent so august a tribunal being troubled with trivial or unimportant actions. As to the very special case which must be made before it will entertain an appeal from the High Court of Australia, see *Daily Telegraph Newspaper Co. Ltd.* v. *McLaughlin* [1904] A.C. 776, and *Victorian Railway Commissioners* v. *Brown* [1906] A.C. 381. The safeguards in respect of criminal appeals are discussed in *Bertrand's Case, supra*, and also in *Ibrahim* v. *R.* [1914] A.C. 599, where the appellant was so humble a person as an Afghan sepoy, and applied *in formâ pauperis* from a conviction of murder at Hong Kong. It was held that he was entitled to approach the Council, but that the facts in the case were clear, and there had been no substantial miscarriage of justice.

In *Re Dillet* (1887) 12 A.C. 459, another case of considerable importance in respect of the Council's criminal jurisdiction, the appellant, a solicitor, appealed from a conviction in the Supreme Court of British Honduras, in which it soon became apparent that the Chief Justice had played a very unjudicial part, and had grossly misdirected the jury. "Their lordships are of opinion," said Blackburn, J. (p. 470), "that these directions were grievously unjust to the appellant, and in many instances outraged the proprieties of judicial procedure.

A conviction obtained by such unworthy means cannot be permitted to stand." In fact, substantial injustice again warranted the Council's interference.

In civil cases, the Privy Council rules prescribe for a minimum value of the subject-matter of dispute before an appeal is entertained, but the rule may be relaxed if a particular case is of public importance, or brought by way of a test.

The ordinary practice and procedure of the Council are well known to the profession generally, and there is the extremely singular feature that the judgment of the Committee in theory binds nobody. It takes the form of advice tendered to the Sovereign, which in theory he is not bound to accept. In practice he invariably does so, and thereupon an Order in Council is made, and the judgment binds the parties like any other. Again, the advice given to the Sovereign having to be the best possible in the circumstances, the Committee must not be hampered by precedents. From this rule the curious result follows that the Council is not bound by its own precedents, nor in theory do they bind any other court. In practice, of course, the judges being the pick of those in the Empire, its judgments are treated with universal respect. It may be added that the Council, being at liberty to disregard its previous rulings, differs from the House of Lords in its appellate jurisdiction, which is bound by its own decision on the interpretation of a statute or other matter of pure law, see *London Street Tramways Co.* v. *L.C.C.* [1898] A.C. 375.

No doubt the most striking difference between the House of Lords as ultimate appeal court in England and Scotland, and the Privy Council as such court for overseas appeals, is that each judge in the House of Lords delivers his own opinion, whereas the Privy Council judgment is that of the judicial committee as a whole, and dissent is not therefore revealed. If the two tribunals were ever amalgamated into an Empire Court of Appeal, the question would arise which procedure was the best to adopt. The decisions of the House of Lords are certainly more impressive when they consist of the unanimous judgments of several lords, but are correspondingly weakened by dissent. And an even number of judges occasionally results in evenly divided opinion, which stultifies the House in being unable to make any order.

The loss of the right of appeal of any subject of His Majesty to a tribunal, the members of which are among the most learned and impartial judges in the world, and particularly informed with that sense of justice that underlies our law, is not a matter to be lightly considered. To paraphrase a well-known saying, the highest courts in some of the Dominions may consist of just and learned men all the time, and in all the Dominions for some of the time, but that they necessarily will do so in all the Dominions for all the time is a much wider proposition. The possibilities may perhaps be illustrated by reference to the American courts, which have developed in their own way since they threw off the Privy Council authority. Whether, for example, SACCHO and VANZETTI were rightly convicted in Massachusetts is a matter difficult for an Englishman to judge, but he may believe that they would have had a better chance of justice if, like IBRAHIM and DILLET, they had the right to appeal to the Privy Council. And that right of appeal at the present moment links the Empire together in a common bond, based on, it may be, the most skilful and impartial administration of justice the world has ever known.

DEPARTMENTAL COMMITTEE ON LOCAL GOVERNMENT OFFICERS.

In pursuance of a recommendation made in the Final Report of the Royal Commission on Local Government, presided over by Lord Onslow, the Minister of Health has appointed a Departmental Committee "to inquire into and make recommendations on the qualifications, recruitment, training, and promotion of Local Government Officers."

Any association or body desirous of giving evidence before the Committee should communicate with the Secretary, Miss E. Sharp, Ministry of Health, Whitehall, S.W.1.

Misappropriated Cheques and Dividend Warrants.

Slingsby and Others v. *Westminster Bank Ltd.* (*The Times* 15th October) is an important case on ss. 82 and 95 of the Bills of Exchange Act, 1882. It concerned two documents, a draft for £250 War Loan interest, and a cheque for £5,000. Both formed portion of the estate of HARRY TURNER, deceased, and properly fell into the hands of one CUMBERBIRCH, who was solicitor to his executors. The War Loan draft was crossed "A/c Harry Turner decd.," and CUMBERBIRCH ought to have paid it to the credit of the executors. By a more or less plausible story, he induced the bank manager to credit it to his own private account. CUMBERBIRCH subsequently disappeared, and the case was argued on the footing that he had misappropriated the money. The bank pleaded protection under s. 95 of the Bills of Exchange Act, or s. 82 if that did not apply. FINLAY, J., ruled that the £250 draft was a dividend warrant within s. 95, but also intimated his opinion that, had he not so held, he would have decided that it was a crossed cheque within s. 82. By s. 3 of the Crossed Cheques Act, 1876, "crossed cheque," for the purposes of that Act, included a dividend warrant on Government stock. The Act was repealed by the Bills of Exchange Act, which defined "cheque" without reference to dividend warrants (s. 73), but added s. 95, applying the provisions as to crossed cheques to dividend warrants. It being admitted by plaintiffs' counsel that, if the Act of 1876 had applied, the bank would have succeeded, FINLAY, J., observed that it would have been startling if the Act of 1882 had, without Parliament having the intention to do so, effected so important a change in the law in respect of dividend warrants on Government stock. The fact that a bank official signed the draft created a difficulty as to a minor point decided in *Capital & Counties Bank* v. *Gordon* [1903] A.C. 240 (see Lord LINDLEY'S observations on "Class 3," p. 250). This case is not of normal authority, for, on the major point decided, it was reversed by the Bills of Exchange (Crossed Cheques) Act, 1906, but the decision that a draft by one branch of a bank on another is not a cheque within the meaning of the Act was not touched, and, as FINLAY, J., pointed out, is hardly reconcilable with that of BAILHACHE, J., in *Ross* v. *L. C. & W. Bank* [1919] 1 K.B. 678, in which the attention of the learned judge does not appear to have been drawn to *Gordon's Case*. FINLAY, J., was of opinion that the cashier of the Bank of England was an agent of the Government and not of the Bank of England in making the draft, and that consequently *Gordon's Case* did not apply. He ruled that the bank officials, in accepting the tale of CUMBERBIRCH, had acted without negligence. In this respect the case is not an easy one, for, although CUMBERBIRCH was employed by the executors, who *primâ facie* would sustain any loss by the fraud of their agent, it is certainly arguable that, the cheque being crossed as it was, they only authorised him, to the express knowledge of the bank's officials, to pay it in to their account. As to the second point, £5,000 of the estate was in a bank awaiting investment, and CUMBERBIRCH prepared a cheque for that amount to the executors' stockbrokers, and procured the proper signatures to it. After it had been signed, however, he (according to the facts as accepted by both sides) fraudulently added the words "per Cumberbirch & Potts" (the name of his firm) on the face of the cheque. He then paid it in to the credit of a company of which he was managing director, in the defendant bank. The executors did not keep their account in that bank. It was held that, as against them, s. 64 of the Bills of Exchange Act, 1882, applied, with the consequence that, neither CUMBERBIRCH nor his company being holders in due course, the cheque in their hands was avoided. The executors sued the defendant bank for crediting the company with £5,000. The court held, however, that if the executors were damnified, it was by their own bank debiting them with the £5,000, and that therefore

he action in this respect was misconceived. The question whether an action by them lay against their own bank for so debiting them, and, if so, whether the latter bank could claim indemnity from the defendant bank, was not before the court, and therefore was not decided. If the claim is hereafter made, the point is likely to be raised whether the company's bank was a "holder in due course" within s. 64, an issue on which the law laid down in *Sutters* v. *Briggs* [1922] 1 A.C. 1, may be applicable. The case adds another to the many authorities working out the problem which of two innocent parties ought to bear the loss occasioned by the fraud of a third.

Appeals to Justices under the Road Traffic Act, 1930.

THE existence of an appellate jurisdiction in courts of summary jurisdiction is not well known. Appeals to justices are usually from the decision of administrative bodies or officials of a judicial or quasi-judicial character, and in recent years the provisions authorising such appeals have grown more numerous. Many of them are contained in local Acts. The London County Council (General Powers) Acts especially have many such provisions.

Some general provisions however exist. Thus there are various sections of the Public Health Act, 1925, authorising such appeals. Section 8 of that Act provides a procedure to be followed. Had the Parliamentary draughtsman borne in mind the existing law, part of that section would have been seen to be unnecessary, for the matter had already been regulated by s. 40 (1) (*c*) of the Criminal Justice Administration Act, 1914, and r. 58 of the Summary Jurisdiction Rules, 1915.

It is to be anticipated that the right of appeal given under certain provisions of the Road Traffic Act, 1930, when it becomes law, will be extensively used, and it is desirable that the procedure should be better known.

Section 5 (5) of that Act provides for an appeal to a court of summary jurisdiction by any person who is aggrieved by the refusal of a licensing authority to grant a licence or by the revocation of a licence under that section. The section contains, it will be remembered, the important provisions as to the physical fitness of would-be motor drivers, and it is to be anticipated that there will be considerable difference of opinion between licensing authorities and applicants for licences. We anticipate a substantial increase in the work of courts of summary jurisdiction as a result.

Section 82 provides for a similar appeal against the refusal or failure of a traffic commissioner to grant a licence to a person desirous of becoming or continuing to be a driver or conductor of a public service vehicle, or against the suspension or revocation of such a licence, or any limitation imposed thereon. There is first a right to a reconsideration by the commissioner, and then an appeal to a court of summary jurisdiction.

Now r. 58 cited above imports the whole procedure of the Summary Jurisdiction Acts. The proceeding is to be "by way of complaint for an order." This is of considerable importance in various ways. Thus the limitation of time for proceedings, s. 11 of the Summary Jurisdiction Act, 1848, will apply. The six months runs "from the date when the matter of the complaint arose," and we suggest that this date is the date when the decision by which the appellant is aggrieved is communicated to him, though it might be contended that it would run from the actual date of the formal making of the decision. This is perhaps not of great importance, as all these appeals are likely to be taken promptly.

The venue is provided by the Road Traffic Act itself. The court in all cases is "a court of summary jurisdiction acting for the petty sessional division in which the person" (i.e., the appellant), "resides."

It is not to be supposed that there will be any disobedience to the order of a court of summary jurisdiction in such a matter. If there were the machinery for enforcement is inadequate: see Summary Jurisdiction Act, 1879, s. 34. It is unlikely that counsel will be called upon to exercise ingenuity in seeking other modes of redress.

The decision of the court of summary jurisdiction will be final on the facts. There is no general right of appeal to quarter sessions against an order of a court of summary jurisdiction, and no right of appeal in the particular instance is provided by the statute conferring power to make the order (i.e., the Road Traffic Act itself). But there is an appeal on law to the High Court by way of case stated, for the decision is an order within s. 33 of the Summary Jurisdiction Act, 1879, and a determination within that section and s. 2 of the Summary Jurisdiction Act, 1857. We should not be surprised to see some interesting points of law taken, especially on the novel provisions as to physical fitness of drivers. *Mandamus* or *certiorari* can, of course, be sought in suitable cases.

Upon the appellant's complaint a summons issues to the authority against whose decision the appeal is taken. No form has been prescribed by statute or rules. A summons should recite that complaint has been made this day by A.B., that he is aggrieved by the refusal to grant a licence to drive a motor vehicle, and that he desires to appeal against the said refusal to the court of summary jurisdiction named in the summons, which should then proceed to notify the respondent of the said appeal and to require him to appear, at a time and place named in the summons, to answer the complaint and be heard in support of the refusal.

The form will be varied of course to meet other cases, such as revocation.

It may well be that other questions will arise upon the procedure under, and generally as to the operation of, these sections, but we hope we have outlined the principal considerations which have to be borne in mind in dealing with them.

Company Law and Practice.

L.

VARIATION OF CLASS RIGHTS BY AGREEMENT.

A CORRESPONDENT has raised a question in connexion with the variation of class rights which seems worthy of some examination. In this column about a couple of months ago (No. XLII, p. 576) I was discussing the protection of the rights of classes afforded by s. 61 of the Companies Act, 1929. Whether this section is likely to prove of any real assistance to minorities of any class of shareholders is open to question, as was there pointed out.

The point raised by my correspondent deals with a variation of rights, not by resolution of the members of the class, but by agreement. Where rights are varied by resolution, all the members of the class will be aware of the variation, or at any rate of the fact that a variation is contemplated, by reason of the notices of the class meeting which will have been sent out; but it may be that under the articles the rights may be varied with the consent in writing of a certain proportion of the members of the class. Where such a consent is given, a member may not be aware of the variation at the time it is made, as sufficient consents may be obtainable to bind the class without even approaching him. Now, under s. 61, in order to obtain any relief from the court, an application must be made within seven days after the date on which the consent was given or the resolution was passed.

The Greene Committee, in considering the modification of rights, was particularly concerned with the necessity of a speedy decision, should any statutory right to apply for relief be given; and recommended that seven days should be the maximum for making the application—the seven days to

date, in the words of the report, "from the passing of the resolution." There is, in the sentence in the report dealing with the time limit, no mention of the case where the variation is done by agreement, though earlier on it is referred to. It may also be noticed that the report recommends (a recommendation carried out by the section) that the decision of the judge of first instance should be final and conclusive.

Hence it seems that a member who is not aware, within seven days of the giving of the requisite consents, that the rights of his class have been varied by consent will be absolutely shut out from any sort of remedy under the section, there being, as recommended by the Committee, no power in the court to extend the time for making the application. It is quite clear that in a case of this sort the time allowance should be cut down as much as possible, so as to minimise the risk of the holding up of legitimate business operations through the making of an application under the section. Once such an application is made it follows that there are many things which the company cannot properly or safely do until the matter is disposed of, and experience shows that when class rights are to be varied it is nearly always necessary that the variation should be put through and carried to completion as speedily as possible. Even as it is, an application of this sort must delay matters very considerably—and indeed the mere existence of the section may well cause delay, in that many companies in which the rights of a class have been modified may not feel justified in proceeding as if the modification were effective until the time for the making of an application has expired. In the vast majority of cases this will not be considered necessary, but doubtless there will be cases where it will be desirable to wait the requisite time before proceeding on the assumption that the modification is binding.

But be this as it may—and everyone will agree that a decision under the section should be speedy—it seems clear, as my correspondent points out that minority members of a class may be at a disadvantage where the class rights are varied by agreement. They will, of course, still have their remedy which previously existed, but they may be shut out of the benefit of this section, purely owing to lack of information. It is true that they *may* get the information, for, under s. 118 (4) (*d*), all resolutions or agreements which effectively bind all the members of any class of shareholders must be forwarded to the Registrar of Companies and recorded by him; but this has to be done within fifteen days after the passing or making thereof, so it need not be, and probably will not be, filed within the time limited for the making of the application under s. 61. In any event, a member would hardly be likely to make a daily search of the file.

A search of the file will, however, give a member the melancholy satisfaction of knowing that his class rights have been altered, both by reason of s. 118 (4) (*d*) above referred to, and because an order made by the court under s. 61 must be forwarded to the Registrar, and will presumably be filed. It might, in the case of a member who is without a remedy in the circumstances indicated above, be thought to smack of sour grapes if he were to say that the remedy is perhaps not worth much in any case, but as an unprejudiced observer I may be allowed to make this statement myself; or rather confirm it, for it is a view which I have already expressed at p. 576 of this volume.

(*To be continued.*)

BASIS FOR REDEMPTION OF TITHE RENT-CHARGE.

The Minister of Agriculture and Fisheries announces that for the purpose of the redemption of tithe rent-charge for which application is made after the 31st October, 1930, until further notice, the compensation for redemption will be twenty-two and a half times the net amount of the tithe rent-charge after the deductions prescribed by the Tithe Acts, 1918 to 1925, have been made.

Mr. H. W. Michelmore,

Solicitor and Notary Public.

We have pleasure in including in this number a portrait of Mr. Henry William Michelmore, solicitor, Exeter, who is this year's Chairman of the Solicitors' Benevolent Association. Mr. Michelmore was born at Newton Abbot in 1864, was educated at Rugby and articled to Mr. W. J. Battishall, of Battishall & Houlditch, Exeter. He passed the Final Examination with First Class Honours in June, 1887, and commenced practice in Exeter, being appointed Deputy Clerk of the Peace for the County of Devon.

In 1897 he organised the County of Devon by parishes for the Lord Lieutenant, the late Lord Clinton, and raised a fund of several thousand pounds in commemoration of H.M. Queen Victoria's Diamond Jubilee. The income of the Fund has been applied annually since then in making grants to the Devonshire hospitals on the principle of the London Hospital Saturday Fund.

In 1902 he became a Freeman of the City of London by joining the Company of Loriners.

He has taken an active part in Freemasonry, being a Past Master of Lodge No. 39, which will celebrate its bicentenary in 1932, a Past Grand Warden in the Province of Devonshire in the Craft and Mark Degrees and Past Grand Registrar in the Royal Arch Degree. Also a Past Grand Steward of England in the Mark Degree.

He has also taken great interest in the Friendly Society movement, having been Grand Master for the Exeter District of the Oddfellows and Chief Ruler of the Exeter District of the Independent Order of Rechabites and is a trustee for the Ancient Order of Foresters.

In 1912-13 he was Mayor of Exeter, and was subsequently appointed a Governor of the Royal Albert Memorial Museum Library.

In 1914 he was elected Chairman of the Devon and Exeter Discharged Prisoners Aid Society, and continued to act in that capacity until the present year.

In October 1918 he was appointed Registrar of the Diocese of Exeter and also Registrar of the Consistory Court of the Diocese.

As the present Chairman of the Solicitors' Benevolent Association Mr. Michelmore is now making strenuous efforts to close the fund inaugurated by Sir Cecil Allen Coward (from which the fund takes its name) before the end of the year. To this fund, it should be mentioned, the Board of the Association added a sum of £10,000 from the Maddox-Simpson bequest, and have been advised that if they can raise the whole of the fund to £20,000 they can safely undertake the work of maintaining, educating and starting in life the children of deceased members who require such assistance. We feel sure that this work will appeal strongly to all solicitors, and for the honour of the profession we sincerely hope that Mr. Michelmore's appeal will be crowned with the success it undoubtedly deserves. H.

A Conveyancer's Diary.

Entailed Interests.

I left this subject last week saying that I proposed to consider the position of a tenant in tail who desired to sell the land in fee simple and receive the purchase money himself. I am, of course, assuming a case where there are no charges or interests having priority to the estate tail.

Take the familiar instance of a person entitled as tenant in tail in possession, free from all overriding charges, on the 31st December, 1925. By virtue of the transitional provisions of the L.P.A., and the S.L.A., the legal estate in fee simple vests in him and his estate tail is converted into an equitable interest and, at his request, it is the duty of the trustees of

the settlement under which the estate tail arises to execute a vesting deed in his favour. The tenant in tail may, however, execute a disentailing assurance before any vesting deed has been executed. That will not, of course, affect his right to call for the vesting deed, but it may make a difference regarding his right to sell the fee simple and receive the purchase money.

In such a case, it was decided in the well-known case of *Re Alefounder's Will Trusts* [1927] 1 Ch. 360, that the estate owner being entitled both at law and in equity to the fee simple could make a good title apart from the S.L.A.

There are two important sections of the S.L.A. to which it is necessary to refer in this connexion.

First, there is s. 13, which provides that where a tenant for life or statutory owner has become entitled to have a principal vesting deed or vesting assent executed in his favour, then until a vesting deed is executed any purported disposition of the settled land by any person other than a personal representative (not being a disposition of an equitable interest) shall not take effect, except in favour of a purchaser of a legal estate without notice of any settlement, but shall operate only as a contract to carry out the transaction after the requisite vesting instrument has been executed.

It was that section which was relied upon in *Re Alefounder's Will Trusts* as showing that the estate owner was not in a position to convey the legal estate in fee simple. It was, however, held that "disposition" under the section meant a disposition under the powers conferred by the Act and as those powers were not being exercised and the estate owner was able to convey the legal and equitable estate in fee simple without recourse to those powers, the section did not apply.

The other important section to which reference must be made is s. 18, sub-s. (1) of which provides, in effect, that where land is the subject of a vesting instrument and the trustees have not been discharged under the Act, then any disposition by the tenant for life or statutory owner of the land shall be void, except for the purpose of conveying or creating such equitable interests as he has power in right of his equitable interests and powers to convey or create.

That sub-section, it will be observed, only applies when there has been a vesting instrument and was not, therefore, material for the purpose of the decision in *Re Alefounder's Will Trusts*. It remains to be considered what the effect of the sub-section is where there has been a vesting instrument.

Taking again the familiar instance of a person entitled as tenant in tail in possession free from incumbrances in whom the legal estate in fee simple became vested on the 1st January, 1926, and who has obtained a vesting instrument in his favour.

It is, of course, open to the estate owner in such a case to exercise his powers of sale under the S.L.A., the purchase money being paid to the trustees of the settlement. He may then by executing a disentailing assurance to himself become entitled to call on the trustees to pay the purchase money to him. The result will be the same if the disentailing assurance has been executed before the conveyance.

Suppose, however, that the estate owner wishes to avoid having the purchase money paid to the trustees and to receive it himself—can he do it, and convey the legal fee simple to a purchaser with notice of the settlement in spite of s. 18? I think that he can.

It is clear that the estate owner may by executing a disentailing assurance possess himself of the equitable fee simple. That equitable fee simple he may convey to a purchaser. In that event, I think that the purchaser will be able to take advantage of sub-s. (2) (*b*) of s. 18, which enacts that the restrictions imposed by the section do not affect the right of a person of full age who has become absolutely entitled to the settled land free from all limitations, powers and charges taking effect under the trust instrument, to require the land to be conveyed to him. Consequently the purchaser, having become entitled to have the land conveyed to him, may require the estate owner in whom the legal estate is vested to convey it accordingly.

There are, therefore, three operations necessary: (1) The disentailing assurance of the equitable estate; (2) the conveyance of the equitable fee simple to the purchaser; and (3) the conveyance of the legal estate in fee simple to the purchaser. In fact (1) and (2) may be accomplished by one operation as the conveyance of the equitable fee simple by the tenant in tail takes effect as a disentailing assurance under the Fines and Recoveries Act.

I cannot see why the whole thing cannot be done in one deed, the estate owner first conveying the equitable fee simple thereby barring the entail and then conveying the legal estate to the purchaser as a person who has become absolutely entitled free from all the limitations, powers and charges taking effect under the settlement, to require the land to be conveyed to him. If the transaction can be effected by two deeds, it may just as well be done by one.

It follows that, whether there has been a vesting instrument or not, an estate owner who has the equitable estate tail and the legal estate in fee simple may convey the fee simple to a purchaser and receive the purchase money without the intervention of the trustees of the settlement or the execution of any deed of discharge by them.

It would, of course, always be better to obtain a deed of discharge before the conveyance to the purchaser and thereby avoid all questions and keep the disentailing assurance off the title, but I do not think that it is really necessary.

I think that it is clear that where there has been a vesting deed a purchaser can insist upon having a conveyance from the estate owner in exercise of his statutory powers, or upon there being a deed of discharge executed before the conveyance. A conveyance by the estate owner alone in the manner which I have mentioned would be a conveyance of the legal estate with the concurrence of a person (the estate owner himself) entitled to the equitable interest, and therefore such as the purchaser is not compelled to accept, even though provided for in the contract (L.P.A., 1925, s. 42 (1)).

It will not often happen that a purchaser will be found willing to forego his right to a conveyance under the statutory powers or by the estate owner after the settlement has been duly brought to an end by a deed of discharge. It may be, however, that by the death of the trustees the position will arise that there is no one able or willing to execute a deed of discharge, and in such a case it would hardly seem reasonable for the purchaser to insist (as I think he could) upon the vendor going to the expense of an application to the court for the appointment of trustees when, in fact, he could obtain a good title without any such appointment. I think that, in that state of facts, the purchaser might reasonably require that there should be two deeds, the first being a conveyance of the equitable fee simple to him operating as a disentailing assurance, and the second a conveyance of the legal estate to him as a person who had become entitled to have the land conveyed to him within the meaning of s. 18 (2) (*b*) of the S.L.A. As I have said, I do not think that two deeds are required, but if the purchaser were willing to relieve the vendor of the expense of an application to the court for the appointment of trustees, the latter could not object if the purchaser, *ex abundanti cautelâ*, insisted upon the transaction being carried out in that way.

Landlord and Tenant Notebook.

Surrender of Keys.

Keys so readily suggest possession that, when a tenant hands the keys of the premises demised to his landlord and the latter accepts them, it does not take much more to establish a surrender of the lease. (*cf.* the "decontrol" case of *Jewish Maternity Society's Trustees* v. *Gartinkle* (1926), 42 T.L.R. 589). And if after effecting this symbolical delivery the tenant disappears, and the landlord, mindful of the loss and expense involved in proceedings for forfeiture or under the Small Tenements Recovery Act, not unnaturally succumbs

to the temptation to let to someone else, he of course loses all claim against the old tenant. The newcomer may leave before the original term would have expired, but no rent can be claimed from him whom the lessor precluded from occupying: *Walls* v. *Atcheson* (1826), 3 Bing. 462.

But the essential question to be determined when surrender by operation of law is alleged is: what was in the mind of the parties; and it follows that when the return of keys is relied upon, events which have happened before and which happen after that act may be relevant. Not infrequently it appears that a dispute has preceded and led up to the handing over of keys, as in *Grinman* v. *Legge* (1828), 8 B. & C. 324, and *Dodd* v. *Acklom* (1843), 6 M. & Gr. 672. In the former case, the trouble arose during the second quarter of the tenancy; the tenant said she would quit, and the landlord responded with an intimation to the effect that such an event would cause him great pleasure. The tenant next proceeded to remove her belongings; this took three days, after which she gave the landlord the key and departed. In the action, it was held that he could not recover either rent for the quarter or damages for use and occupation. In the second-mentioned case the key, which had originally been handed to the wife of the tenant, was returned by her soon after the commencement of the tenancy, the parties being at loggerheads on a question of rates. The question of agency having been decided in the tenant's favour, it was held that a surrender had been effected. The report does not say whether anything was said at the time of the actual handing over.

Events taking place both before and after the keys incident were considered in *Furnivall* v. *Grove* (1880), 8 C.B.N.S. 496. During the term, the landlord was ordered, by a local authority, to repair a floor in the premises (a factory and warehouse). He told the tenant he was going to pull down the building and offered to assist him in removing plant. The demolition commenced; the tenant left, and sent the landlord the key some six weeks later, together with a letter stating that he had been forced out. The landlord sent no reply, but went on pulling the property down. It was held that he could not recover rent; he had either evicted the tenant, or accepted a surrender.

The inferences were drawn mainly from subsequent acts in *Phené* v. *Popplewell* (1862), 12 C.B.N.S. 334. The tenant, who was to the knowledge of the landlord insolvent at the time, took the key to the latter's office and left it there. Later, the landlord showed prospective lessees over the property. It was held that as soon as he did what would otherwise make him a trespasser, he accepted the offer to surrender, the offer being a continuing one evidenced by the key.

Mere physical delivery of keys, is, of course, not sufficient to work a surrender, and the above case was distinguished in *Oastler* v. *Henderson* (1877), 2 Q.B.D. 575, C.A. Six months after the commencement of a seven years' term the tenant left for America, handing the key to someone with instructions to dispose of the lease or bargain for a surrender. Efforts directed towards disposal having failed, the agent handed the key to a servant of the landlords. Soon after that, "To let" bills appeared in the windows. Then, a couple of rooms were used for a time by workmen of the lessors, who were saddlers. Two years later, and four years after the tenant's departure, a lease was granted to a new tenant. The action, brought against the old tenant on his return, was for 3½ years' rent. It was held that in the circumstances the attempt to let the premises was as much for the defendant's benefit as it was for the plaintiffs', and that until possession was actually taken there was no surrender by operation of law.

A case in which the key was handed to a clerk, who was found to have no authority to negotiate a surrender, is *Cannan* v. *Hartley* (1850), 9 C.B. 634. And in *Re Panther Lead Co.* [1896] 1 Ch. 978, the landlords' agents, acting on behalf of the liquidator, received the key but wisely said they did so "without prejudice to the question of the lessors' rights"; this was held not to constitute a surrender.

Our County Court Letter.

VERBAL TENANCIES OF SPORTING RIGHTS.

THE validity of the above was considered in the recent case of *Owen* v. *Atherton* at Bala County Court, in which the plaintiff claimed £97 3s. 6d. as damages for breach of contract. The defendant had entered into two verbal agreements, viz., (1) in August, 1925, to take the sporting rights at Cerrigydruidion until the end of the shooting season on the 2nd February, 1926, at a rent of £100, (2) early in 1926 to take the same rights for another year at the same rent, plus £1 a week as keeper's wages, as under the first agreement. The keeper's wages had not been paid for the first season, however, and, at a later date in 1926, the defendant cancelled the agreement for 1926-27. The plaintiff succeeded in re-letting the shooting in August, 1926, but the new rent was only £80, and he therefore claimed, *inter alia*, the difference between the two rents, viz., £20, another item being keeper's wages £53. The gamekeeper's evidence was that, towards the end of February, 1926, the defendant had shot snipe and duck, and had also fished, and a guest at the plaintiff's hotel stated that he had been invited by the defendant to come and shoot the following season, viz., 1926-27. The defendant's case was that (*a*) the first letting was from August, 1925, to August, 1926; (*b*) there had been no agreement for a second letting; (*c*) the agreement, not being under seal, was unenforceable; (*d*) he had paid into court £26 in respect of keeper's wages. The contention for the plaintiff was that there had been part performance of the second agreement, as the keeper had looked after the dog of the defendant, who had exercised rights of sporting after the termination of the first agreement on the 2nd February, 1926. His Honour Judge Artemus Jones, K.C., held that the plaintiff was entitled to recover for (*a*) the breach of the second agreement £20, (*b*) keeper's wages £26, (*c*) dog's maintenance £5, (*d*) repairs to gun 11s. 9d. —a total of £51 11s. 9d., with the general costs of the action, except that, on the issue of the keeper's wages, the defendant was entitled to costs subsequent to payment in.

The third point of defence (as to the tenancy not having been under seal) could not have been taken if the land had been in Scotland, as shown by *Adams* v. *Clutterbuck* (1883), 10 Q.B.D. 403. Mr. Justice Cave held that the requirement of a seal was part of the *lex loci* only, and not part of the *lex fori* with regard to land outside the jurisdiction. The matter was therefore governed by the law of Scotland, where the land was situated, and the plaintiff was entitled to succeed. The learned judge further held that, as the defendant had had the enjoyment of the sporting rights, there had been no failure of the consideration, and he was not entitled to plead any invalidity in the lease in answer to a claim for breach of covenant.

The length of notice required to determine such a tenancy was considered in *Lowe* v. *Adams* [1901] 2 Ch. 598, in which the shooting was let to the plaintiff by deed at a rent of £50 a year. He therefore claimed an injunction against the defendants, who claimed to be the shooting tenants under an earlier agreement, not under seal, under which they had paid £21 a year. The landlord had notified them in February that the arrangement would be revoked as from the following 25th March, but the defendants contended that, as they had had the shooting for six years, they were yearly tenants and entitled to six months' notice. Mr. Justice Cozens-Hardy (as he then was) held that the rule applicable to a tenancy of corporeal hereditaments ought not to be applied to the enjoyment of an incorporeal hereditament. The defendants were therefore only entitled to reasonable notice, and a verbal notice in February or early in March, after the end of the shooting season, was therefore sufficient. An injunction was accordingly granted, with 40s. damages, and costs.

Mr. Charles Blackburn, solicitor, of The Laurels, Porlock, Somerset, formerly of Minehead, left estate of the gross value of £10,367 with net personalty £9,103.

Practice Notes.

DEPARTMENTAL MANAGER'S LENGTH OF NOTICE.

In *Gage-Fowell* v. *MacSymons Stores Limited*, recently heard in the Liverpool Court of Passage, the plaintiff claimed damages for wrongful dismissal, viz., £126, being three months' salary in lieu of notice. The plaintiff had been engaged on his answering an advertisement for a manager for a departmental store with a staff of eighty, the annual turnover being £150,000, and he had then sent to his wife to come from America, in reliance on the managing director's assurance that he would have a secure position. After seven months, however, he was dismissed on the ground that the business had declined, the defendant company's case being that the plaintiff had told lies about his trans-Atlantic experience, and that he had never been with a firm in Scotland he had also mentioned. The plaintiff admitted having given false references in order to obtain the position, and it was held by Sir W. F. K. Taylor, K.C., the presiding judge, that this entitled the defendant company to dismiss the plaintiff. There was therefore no case to answer, and judgment was given for the defendant company, with costs, subject to the payment of £7 admittedly due to the plaintiff. Compare a County Court Letter entitled "Damages for Wrongful Dismissal," in our issue of the 26th April, 1930 (74 Sol. J. 261), and a Practice Note entitled "Commercial Traveller's Length of Notice," in our issue of the 1st February, 1930 (74 Sol. J. 72).

DEFECTS IN NEW DWELLING-HOUSES.

In the recent case of *Clements* v. *Davy*, at Plymouth County Court, the claim was for £62 16s. 10d. as damages for breach of an agreement to build a bungalow with best material and good workmanship. The plaintiff entered into possession on Whit-Monday, 1927, and at once observed dampness, of which she again complained in October, whereupon the defendant promised to try damp-proof wash on the walls. It was subsequently found that a part of the building had sunk, and the above sum was, therefore, claimed as the cost of re-erection of certain portions, also for curing dampness, and replacing floor boards and joists affected with dry rot. The defendant denied that his workmen were responsible for the defects, and corroborative evidence was given by the surveyor to the St. Germans Rural District Council, who stated that the placing of canvas upon the floor, before it was dried out, had caused the dry rot. His Honour Judge Lias observed that the defendant, while admitting that the house was damp, had failed to carry out his promise to do something. It was held that the dry rot started from below, by reason of insufficient ventilation or defective wood, and that either improper filling or a bad foundation had caused the porch and path to sink. Judgment was, therefore, given for the plaintiff for £25 and costs. It is to be noted that, in the absence of an express clause in the contract, or a collateral agreement amounting to a warranty, it is difficult to recover damages for breach of any warranty implied in the term "house." The principle of *caveat emptor* may have been rightly applied, in the days when property buyers could afford to employ a surveyor, but the modern purchaser is often a weekly wage earner, compelled by circumstances to buy what is offered. The bye-laws only govern such matters as water supply and sanitation, and if, for example, the range does not draw, the vendor is apparently entitled to retort that the buyer should buy an oil stove or cook on the gas ring. It is to be hoped that this branch of the law will soon be reviewed by a superior court in the light of modern developments, for the protection of those not so fortunately placed as the plaintiff in the above case.

Mr. William Britton Seldon, solicitor, of Bideford, Devon, left estate of the gross value of £3,113, with net personalty £1,271.

Correspondence.

The Payment of Death Duties.

Sir,—Your correspondent asks "Is there authority for the statement that interest on death duties is for the purpose of sur-tax grossed or even treated as deductible from the taxpayer's income."

The experience of the writer goes back to 1918 on this particular point. The Special Commissioners in connexion with a death in that year admitted that the claim to gross the interest on death duty was a proper one and up to last year had not departed from that decision.

Naturally it is a practice the subject is unlikely to contest, and whilst it obtains must be deemed a proper construction of the Income Tax Acts.

One factor in the original discussion was the application of tax free 4 per cent. War Stock in satisfaction of duty. This, although free of tax, is liable to be grossed for super tax. The argument from analogy was effectual.

Uxbridge. Turberville Smith.
9th October.

The Expense of Litigation.

Sir,—The London Chamber of Commerce is sending a deputation to the Lord Chancellor which is fixed for the 6th November on the question of the expense of litigation.

Traders in this country suffer from the present antiquated practice and procedure employed in the county courts, and are discouraged from pursuing their remedies to which they are entitled. So farcical is the system, that the obstacles with which plaintiffs are faced can be compared to hazards in midget golf.

It would be interesting to hear the views of other members of the profession.

12, Soho Square, A. E. Hamlin & Co.
London, W.1.
20th October.

"The Law of Light."

[We are enabled through the courtesy of the editor of *The Times* and of the author to publish this further letter from Mr. Nicholson Combe on this interesting subject.—Ed. *Sol. J.*]

Sir,—I find there is a great deal of misapprehension as to the purpose and scope of the Bill to amend the law affecting prescriptive claims to light, which, as I intimated in my letter of 26th September, appearing in your issue of 30th September, it is proposed in due course to put forward. As the matter concerns a very large number of landowners, great and small, and affects a great deal of the nation's wealth invested in house property, it is only right for me to disperse all such misunderstandings at once.

The proposed Bill will be solely directed towards the relief of the unjust burden which the present state of the law imposes on an owner of land whose neighbour erects a building deriving light over that land. The Bill will enable such owner, by adopting the convenient and inexpensive facilities provided by the Bill, to protect his property from the adverse acquisition of a prescriptive right to light As the law now stands he can only protect his interests in such circumstances by adopting odious methods involving him in inordinate expense and liabilities. All this through no fault of his own.

It has been suggested that the scope of the proposed Bill should be extended so as to abolish all prescriptive claims to light. I condemn that suggestion off-hand. The matter is too technical to discuss here. It suffices to say that the principles on which prescriptive claims to light are founded in English law are the same principles which have their place in every system of law throughout the civilised world. One or two States might be named here where prescriptive claims to

light have been abolished by statute. But the conditions in those States are very different from those subsisting in this country. Indeed, to name them here would be to dispose of that suggestion.

The essential merit of the proposed Bill is its simplicity of principle. Its provisions will apply to two categories of buildings, namely, buildings standing or in course of erection when the measure comes into force and buildings subsequently erected. Where light has been enjoyed for more than twenty years in circumstances which would entitle the owner of the building to protection for the windows, the Act will not confiscate his rights. In due course the Legislature will be be given an opportunity of improving the law by promulgating this proposed measure and thereby removing an unfair hardship by affording very simple and inexpensive facilities to landowners, great and small, to protect their property.

Lincoln's Inn. R. G. NICHOLSON COMBE.
18th October.

Sir,—Referring to your recent articles re right of light, is not the best solution to adopt in respect at all events of new buildings the South Australian law of there being no power to acquire right of light over other people's property?

London, E.C.3. "MARK LANE."
21st October.

The Development of New Estates.

Miller v. *Cannon Hill Estates.*

Sir,—May I refer to the comment on this case at p. 623 of Vol. 74 under date 20th September, 1930?

In my opinion the report is misleading to the legal profession.

To take but one example, it does not say that one of the plaintiff's main points was that there was an agreement, ouside the written contract, that the house should be well built and of good materials. The jury found that there was such an agreement and that the defendants had failed to comply with it.

Moreover, the plaintiff did not buy a newly built house but a house in course of erection.

But for these two important facts, I have no hesitation in saying that I should have lost my case.

London, E.C. W. H. MILLER.
3rd October.

[As the case of *Miller* v. *Cannon Hill Estates Limited* is still *sub judice* (being No. 166 in the list of appeals for hearing in the Civil Paper) it is felt that any further comment would be inopportune.—ED., *Sol. J.*]

Reviews.

Changes in Motor Car Law effected by the Road Traffic Act, 1930. With the text of the Act. By N. R. FOX-ANDREWS, B.A., LL.B., Barrister-at-Law, and A. C. CRANE, J.P., Solicitor. 1930. Large crown 8vo. London: The Solicitors' Law Stationery Society, Limited. 12s. 6d. net.

This is a thoroughly workmanlike book. It deals, as it professes to deal, with the changes in the law, and in doing so assembles the observations to be made under apt chapter headings. Coupled with a very full index, this makes the work very easy to consult, and very well adapted to assist quick comprehension of a complicated Act and its results on the existing body of law.

The authors have evidently thought out their subject, because not only is the arrangement convenient and suitable, but pertinent observations are to hand on every page. Thus, on the "highway code," it is pointed out that this is not law, and the maxim *ignorantia juris* will not apply. Nevertheless, one supposes that the highway code will be, as it certainly ought to be, a summary of the practice of reasonable road users, and a failure in any particular duty will be some evidence of at least incapacity in the person who fails.

The authors are undoubtedly right in suggesting that under s. 15 the information cannot allege both "drink" and "drug"; a choice must be made, though one might hazard the guess that a person who made himself incapable by taking both alcohol and morphia would be held by the High Court to be properly dealt with for being under the influence of drink and a drug. Incidentally, the drink need not perhaps be alcohol at all; a person who drank say an overdose of some ordinarily harmless liquid would technically be within the section, at least till the High Court says that drink means intoxicating liquor.

There is a small slip on p. 11. The Criminal Justice Act, 1925, does not give a right of appeal from any conviction. That comprehensive right is due to the operation of that Act, plus s. 37 (1) of the Criminal Justice Administration Act, 1914.

The British Year Book of International Law, 1930. London: Humphrey Milford, Oxford University Press. 16s.

The work of the League of Nations and the Permanent Court of International Justice bulks larger and larger in the sphere of the international lawyer, and this development is naturally reflected in such volumes as the present. In both there is at the moment an unfortunate tendency to insist on nationalism rather than internationalism, evidenced in the League by the claim voiced by Italy to national representation on the staff of the League, and in the court by the departure from the principle of appointing purely judicial persons as judges, and substituting eminent officials. Here England and France are the offenders.

But the great work goes on. Britain has signed the optional clause. That signing and the reservations are discussed by Sir John Fisher Williams. Professor Brierley deals with the General Act of Geneva, 1928, and Professor Manning with the amendments of the Covenant prepared to bring it into accord with the Kellogg Pact.

The Permanent International Court has two articles, one by Mr. W. E. Beckett reviewing the decisions up to now given by the courts, and another by Mr. Alexander Fachiri on American participation and the necessary revision of the statute. We are very pleased to see, reprinted in the Notes, the address by Mr. Hughes on the "World Court as a Going Concern," an intimate account of the actual working of the machine by one of its most eminent judges, now Chief Justice of the United States.

One article of great value and merit is, "The Indian States," by D. B. Somervell. It defends the views expressed in an opinion given by Sir Leslie Scott, K.C., and others to the Indian States Committee. The position of the native Indian States is imperfectly apprehended both in this country and in British India, yet it is one of the dominating factors in the great question now coming up for attempted settlement.

The Law of Property in Land.— H. GIBSON RIVINGTON, M.A. (Oxon). London: The "Law Notes" Publishing Offices. 21s. net.

Mr. Rivington is one of the editors of the "Law Notes," and their very prompt supply to the demand for information as to the new Property Acts a few years ago is a matter of history. He has also been for many years a lecturer on conveyancing to articled clerks preparing for The Law Society's final examination, and he states that this book is mainly a text-book for their use. This fact, combined with Mr. Rivington's obvious fitness for the task he has undertaken, makes criticism on the part of a practising barrister somewhat difficult. If, for example, he suggests that too much space is given to the rules for the ascertainment of the heir under the old law

(pp. 421-8), having regard to the fact that knowledge of them is only necessary in the rare cases enumerated on p. 428, and in perusing the equally rare abstracts of title in which property descends to a distant relative, he may be told that, his objections notwithstanding, examiners have a penchant for setting questions on the matter. And, similarly, with the twenty pages of Chapter IV on entailed interests, in contrast with fifteen only on wills (Chap. XVI). One strong criticism, however, does lie, and that whether the book is to be used by practising barristers or students, namely, that the single fleeting reference on p. 144 to the Landlord and Tenant Act, 1927, referring to the case of agricultural holdings only, is insufficient. For the Act makes a great change not only in the law, but in the principles on which it is founded, and the cases already decided on it mark its importance. The suggestion may be made that in the next edition Mr. Rivington should disinherit the heir of at least half his pages, and give them to the tenant. The point as to indemnity from a rent-charge, also, on p. 56, illustrated with a quotation from a poem, is now ancient history, and hardly merits its space. On p. 201 Mr. Rivington dismisses "common of pasture" as of "the usual kind and requiring no explanation." One might suppose that examiners would fancy a question as to common appurtenant and common appendant, or something as to stinted pastures, or Lammas lands, subject to a custom which in certain districts has averted many "bungaloid growths." Mr. Rivington might also explain to the student that what he calls profits are elsewhere termed "profits à prendré," lest the latter might suppose that there was any difference. The criticism above as to the Landlord and Tenant Act, 1927, may be applied as well to the single reference on p. 132 to the Rent Restriction Acts, and omission of all reference to the scores of cases decided under it. When the student becomes a solicitor, and handles estates, he will probably have some dozens of problems under the Rent Restrictions and Landlord and Tenant Acts for every one on the distant heir's rights, or on the abolished rule in *Shelley's Case*, also fully explained in the book.

Outlines of Constitutional Law. By DALZELL CHALMERS, B.A. (Law Tripos, Cambridge), Barrister-at-Law, and The Hon. CYRIL ASQUITH, M.A., Barrister-at-Law, late Fellow of Magdalen College, Oxford, and Assistant Reader to the Inns of Court. Fourth Edition. 1930. pp. xxviii and (with index) 488. London: Sweet & Maxwell, Ltd. 15s. net.

Constitutional Law, with its various ramifications, which of necessity covers so large and almost indefinable a field, is perhaps the branch of law most subject to continuing and important far-reaching changes. Any attempt to deal with it exhaustively would, of course, require many more pages than this, to use the authors' own words, "unassuming text-book" contains. The present work, however, gives an admirably concise and useful account of the state of Constitutional Law as it stands to-day. The volume has been considerably enriched and somewhat enlarged by the necessary inclusion of many important matters, and in places has been completely rewritten or rearranged. The appendix on Local Government, for example, is a particularly welcome addition. The encroachment of the Executive on the respective provinces of Legislature and Judicature; the remedies of the subject against the Crown; and the relationship of the British Dominions to the Mother Country are three important aspects of Constitutional Law which have recently attained great prominence, and particularly, perhaps, is the last of interest, in view of the present Imperial Conference. Informative and interesting, though "necessarily brief," references are made to each of those topics. Excellently arranged, and with a comprehensive index, the volume would make a really useful work of reference in the lawyer's library. It is hoped by the authors, who kindly suggest to students more exhaustive authorities on the subject, that those preparing for the Bar examinations will not treat the present volume as a *vade mecum*, but merely use it to condense knowledge previously acquired. It may be confidently asserted, however, that in the hands of the student the book will prove invaluable—a fact which appears to have been fully appreciated by Mr. Griffith in his "Questions and Answers on Constitutional Law and Legal History," where he makes copious references to this work.

The Trial of Captain Kidd. Edited by GRAHAM BROOKS. Edinburgh and London: William Hodge & Co., Ltd. 10s. 6d. net.

This volume is of more historical than legal interest. The story of the sea and the story of piracy are inseparably linked, and whenever the lords of the sea have a weak hand piracy springs up. How very difficult it is to control is shown by the happenings of recent years in the China Seas.

In Dutch William's time, England, in spite of her brilliant naval development under Henry VIII, Elizabeth, and Cromwell, had not a very strong hand at sea. Her navy and naval traditions had been hampered by Stuart parsimony and corruption, and the crowning glory was yet a hundred years off. Piracy and legitimate naval warfare were, indeed, not completely differentiated, and played into one another at points linked by the dangerous letters of marque system. It is doubtful whether Kidd's contemporaries, though under the necessity of suppressing him, were either greatly surprised or greatly shocked.

Considering the whole story, we, even at this distance, can see there is not much occasion for surprise. To send out a sea captain to suppress piracy, as a sort of trading adventure, no cure no pay, was a poor speculation. To press his crew and force him to substitute hands reared in piratical traditions was to invite the catastrophe.

Kidd seems to have been guilty of the offences charged, but even his murderous assault on William Moore has the mitigating circumstance of nerves overwrought and resentment at the position into which he was being forced. One cannot but feel a touch of pity for the Captain's wife and children, who make one brief appearance in the story. Their needs had perhaps hardened his heart to villainy.

A bad system had evil results, so Execution Dock took Kidd and his name became "a nursery byword."

The book is well produced, as volumes in this series always are.

Easements of Light. By JOHN SWARBRICK. B. T. Batsford Limited, 94 High Holborn. £1 1s. 0d. net.

Mr. Swarbrick, who is F.R.I.B.A., member of the Institute of Structural Engineers, etc., is also an architect who has had long experience in cases of infringement of light, and has devoted special attention to research on the subject. He has, in fact, adopted certain new scientific methods to measure the actual or threatened deprivation of light to buildings or rooms in respect of which he is consulted, and his book sets forth his theories and their application. As is well known, systems of measurement of light are now increasingly preferred by courts to the mere opinions of expert witnesses, often very contradictory, on which reliance had to be placed in less scientific days. Whether a particular system which is now much in favour gives sufficient value to diffused light is perhaps not an easy question. To the outsider, an actual photometer, such as that shown in the frontispiece of the book, would appear to be conclusive if it properly fulfils its function. The problem of access of light is largely one of angles, and therefore mathematical. The reader is presented with numerous algebraical and trigonometrical equations, and even some involving the integral calculus (see p. 37, for example), so that to master the whole book he would require at least sufficient mathematical knowledge to pass in a University honours degree examination. One can conceive of the book being very useful in the cross-examination of an expert in

court, but even so the cross-examiner, unless exceptionally gifted, would probably require another expert at his side to assist him. Mr. Swarbrick makes occasional references to reported cases (see for example pp. 141-2), but no lawyer will thank him for his appendix of cases, with date only, and without either reference to the report or to the page in his book (if any) where a case is mentioned or discussed. Some of these cases, however, are scattered over the index. Mr. Swarbrick's elaborate schedule of depreciation of natural illumination and rental value, with spaces for thirty-six entries, opposite p. 142, must be a formidable document when filled in, and can hardly fail to contain all the necessary data in respect of a given problem. The book, however, is rather one for the architect or other expert who is called in to advise as to light than for the practising lawyer, unless he is a competent mathematician, and specialises in such cases. Considering that it has well over a hundred illustrations, including full plates, the price of £1 1s. 0d. appears very reasonable. The student who can master this book will have little to learn on the theoretical method of treating easements of light.

Building Societies as Investments. By A. Dudley Southam. Effingham Wilson.

An author who writes as Mr. Southam does (p. 93), "Hundreds of pounds are not infrequently absolutely frittered away in solicitors' professional fees for very simple routine work, which any person of ordinary intelligence could undertake," and again, "A solicitor considers he possesses the absolute right of proving any will drawn by himself or in his possession, and this tends to handicap an executor in arranging a fixed fee for routine work in obtaining probate," can hardly expect his book to be recommended to the profession by The Solicitors' Journal, otherwise than on its strictest merits. In fact, its chief object appears to be to recommend building societies to investors, as preferable in yield and safety to single mortgages or trustee investments. In the matter of yield, however, that of certain trustee securities, which we print weekly, will not suffer much when compared with the similar figures of the forty-two building societies, the statistics of which are set forth in Mr. Southam's elaborate table opposite p. 94. And the safety is as good, with probably rather less trouble to the investor. Whether the executors of any investor, who, fired by Mr. Southam's zeal for family trusts and estate companies, will share that zeal when confronted with a demand for estate duty under ss. 34-38 of this year's Finance Act, remains to be seen. Our readers will know from previous articles that our attitude as to these trusts and companies is largely influenced by the fact that the virtuous "tax elimination" which Mr. Southam contrasts with the base "tax-dodging and evasion" can itself be eliminated by statute, a fact which should be sufficiently obvious. Mr. Southam stresses the small percentage of losses on building societies' mortgages, but, while he says (pp. 35-6) that no building society would stoop to the device of "ringing the changes" attributed to solicitors (i.e., calling in all the mortgages in an office during a slack season, and re-investing A's money on Y's mortgage, and B's money on X's mortgage, instead of *vice versa*), he has to admit (p. 27) that the activities of a certain building society were limited to obtaining funds for the promoter's own benefit. It hardly seems likely that such a promoter would hesitate to "ring the changes" if he saw any profit in doing so, nor, Mr. Southam's apologetics notwithstanding, can the Liberator and Birkbeck crashes be wholly forgotten. We think a book showing the reasonable advantages of investment in building societies could be written without the suggestion that thereby extortion by solicitors can be avoided. Moreover, the purist may point out that a building society is a legal entity, corporate or unincorporated, in the shares of which, or in loans to which, the investor may place his money, but it is no more an investment than the Government is War Loan.

Secretarial Practice, The Manual of the Chartered Institute of Secretaries. W. Heffer & Sons, Ltd. 1930. 12s. 6d. net.

A new edition of this manual was clearly necessary on the passing of the Companies Act, 1929, and we learn from the preface that it has been prepared by Mr. L. L. Cohen, K.C. The work has been well done and the standard set by the earlier editions fully maintained. The references are so extensive that one is apt to overlook the fact that it is intended primarily for secretaries and not for lawyers. As evidence of the adequate documentation, it may be mentioned that reference is made to nearly 600 cases. The appendices include, in addition to the text of the Act, such useful matters as the Stock Exchange Regulations as to official quotation and permission to deal, and a summary of Company Legislation in the British Dominions Overseas. The whole is covered by an adequate index.

The Law of Hire-Purchase. By W. G. Earengey, Barrister. London: Stevens & Sons, Limited. 15s. net.

Notes of Hire-Purchase Law. By C. Gordon Jones and Reginald Proudfoot, solicitors. London: Butterworths. 10s. 6d. net.

In his preface, Dr. Earengey states that he includes no precedent of a hire-purchase agreement in his work, first because the system extends to so many articles, and, secondly, because "the law is being so rapidly declared that a precedent may become obsolete, or even dangerous, unless modified to meet each decision." On the other hand, Messrs. Jones and Proudfoot begin their book with a model form of agreement in respect of a motor-car, stated by them in the preface to have been through the courts many times, and to have been pronounced by the Court of Appeal to be reasonable and not oppressive. If, however, the contract is found to be genuinely one of hire-purchase, and not of money-lending, the question whether a judge thinks it is harsh to the hirer hardly seems to signify. From Dr. Earengey's preface, his book appears to be the lineal successor to the late Mr. Russell's well-known work, to the fifth and last edition of which he wrote a supplement ten years ago. Messrs. Jones and Proudfoot do not claim to have written a complete treatise on the law applicable to hire-purchase. They have, however, been advisers to a number of large firms specialising in this kind of business, and their work consists of the annotated model agreement above mentioned, together with a digest of some of the most important cases in which they have been engaged, mostly unreported. Perhaps the comment may be made that the reported cases should be complete in their proper setting, and, if the unreported cases are to be quoted as authoritative (or those from the High Court; the County Court cases could not be so quoted), Messrs. Jones and Proudfoot's headnotes and transcripts from the judgments will not suffice. Moreover, the arrangement of placing a headnote or summary in the digest and the judgments in the appendix is somewhat troublesome, for it necessitates a double reference for each such case. Incidentally, it seems a pity that the two Colchester cases included in Messrs. Jones and Proudfoot's book were not reported, for they are important enough to be mentioned by Dr. Earengey (p. 20). The digest to their book would no doubt indicate to a practitioner whether either case was in point in any problem he was considering. Dr. Earengey also makes reference to some of the other unreported cases in the solicitor's book, so it is clear that he has kept well in touch with his subject. In at least one of them, however, he was engaged as counsel. His book appears to cover the law in respect of hire-purchase agreements with fair completeness, and his tables of cases and statutes multiply those of Messrs. Jones and Proudfoot several times over. If, however, the law is in such a state of flux as Dr. Earengey suggests in his preface, his book is likely to be out of date very soon, but we can hardly agree with him. Both books are of

handy size, and should be useful to those who advise firms and companies specialising in this kind of business, and also to the large and increasing class of persons who become their customers.

Books Received.

The Death Duties, comprising Estate, Legacy and Succession Duties. The Law and Practice and the Text of the Statutes. Robert Dymond, of the Estate Duty Office, Somerset House, Solicitor, assisted by G. M. Green, LL.B. (Lond.), Solicitor, of the same Department. Sixth Edition. 1930. Large Crown 8vo. pp. xlvi and (with Index) 696. The Solicitors' Law Stationery Society, Limited. London: 22, Chancery-lane. Liverpool: 19 and 21, North John-street. Glasgow: 66, St. Vincent-street. 12s. 6d. net.

A Handbook on the Death Duties. By H. Arnold Woolley, Solicitor of the Supreme Court. Second Edition. 1930. Demy 8vo. pp. xvi and (with Index). London, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Limited. 10s. 6d. net.

The English and Empire Digest, with complete annotations. Supplement No. 5, dealing with Volumes I–XLIX, being cumulative and containing all the matter of the previous Supplements. Philip F. Skottowe, LL.B., Barrister-at-Law. 1930. pp. clxxvi and 1,185. London: Butterworth and Co. (Publishers) Ltd.

The Law of Auctions, Estate Agency, Valuation and Commission. Heber Hart, K.C., LL.D. Large Crown 8vo. pp. xlviii and (with Index) 463. Third Edition. 1930. Stevens and Sons, Ltd. 15s. net.

Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice. Tenth Edition. 1930. W. Blake Odgers, M.A., and A. H. Armstrong, B.A., Barristers-at-Law. Large Crown 8vo. pp. lxxx and (with Index) 542. London: Stevens & Sons, Ltd. 15s. net.

"*Geographia.*" Greater London Atlas, including Outer Suburbs, and all the London Postal Area, including (1) Key to 124 Sectional Maps, (2) 124 Sectional Maps of Greater London, (3) Map of Underground Railways, and (4) Complete Index to Streets, with Postal Addresses. 1930. "Geographia," Ltd., 55, Fleet-street, E.C.4. 6s. net.

University of London, Faculty of Laws Section of the University College Calendar, 1930-31, including Particulars of the Inter-Collegiate Courses in Law by the Professors and Teachers of the University and King's Colleges and the London School of Economics. The Secretary, University College, London, Gower Street, W.C.1.

Notable British Trials. Trial of Captain Kidd. Edited by Graham Brooks, Barrister-at-Law. Demy 8vo. 223 pp. Illustrated. Edinburgh and London: William Hodge and Co., Ltd. 10s. net.

Handbook of Widows', Orphans' and Old Age Contributory Pensions. T. P. M'Donald, M.A., LL.B., Advocate, and George Davie, B.L., Solicitor. Crown 8vo. 104 pp. (with Index). 1930. Edinburgh and London: William Hodge & Co., Ltd. 3s. 6d. net.

Copyright in Industrial Designs. A. D. Russell-Clarke, Barrister-at-Law. Demy 8vo. pp. xiii and (with Index) 205. 1930. London: Sir Isaac Pitman & Sons, Ltd. 10s. 6d. net.

Conveyancers' Costs. A Handbook with Precedents. F. W. Broadgate (Author of "Conveyancers' Scales, Probate Costs, etc."). Demy 8vo. pp. xiv and (with Index) 153. 1930. London: Effingham Wilson. 10s. 6d. net.

The Unemployment Insurance Acts, 1920-1930. Albert Crew, Barrister-at-Law. Assisted by R. J. Blackham, C.B., C.M.G., C.I.E., D.S.O., M.D., Barrister-at-Law, and Archibald Forman, B.A. (Oxon), Barrister-at-Law. 1930. Demy 8vo. pp. xviii and (with Index) 220. London: Jordan & Sons, Ltd. 10s. 6d. net.

The Law of Hire-Purchase. W. G. Earengey, LL.D., B.A. (Lond.), Barrister-at-Law, Recorder of Tewkesbury. 1930. Demy 8vo. pp. xliv and (with Index) 256. London: Stevens & Sons, Ltd. 15s. net.

Ministry of Health Annual Local Taxation Returns—England and Wales, 1928-1929. Part I—Statement showing the moneys expended and received during the financial year ended 31st March, 1929, by Boards of Guardians and other Poor Law Authorities and the outstanding loan debts. 1s. 3d. net. *The Like.* Part II—Comparative Local Financial Statistics showing moneys expended, etc., by County Councils and Boroughs and the amounts of the outstanding loan debts. 3s. 6d. net. *The Like.* Part III—Comparative Local Financial S atistics of the same Authorities for the year 1927-1928. 1s. 3d. net. 1930. H.M. Stationery Office.

Eleventh Annual Report of the Ministry of Health, 1929-1930. Cmd. 3667. H.M. Stationery Office. 4s. 6d. net.

Manitoba Bar News. Vol. 3. No. 1. September, 1930. The Manitoba Association, Winnipeg.

Palmer's Company Law. A Practical Book for Lawyers and Business Men. With an Appendix containing the Companies Act, 1929, and the Companies (Winding Up) Rules, 1929. Alfred W. Topham, K.C., LL.M., and A. M. R. Topham, B.A., Barrister-at-Law. Fourteenth Edition. 1930. Medium 8vo. pp. clxxiv and (with Index) 768. Stevens & Sons, Ltd. 25s. net.

Stranger's Wireless Library. No. 8, Wireless Waves; No. 9, Wireless Communication and Broadcasting; No. 10, Modern Valves; No. 11, How to understand Wireless Diagrams; No. 12, Selection of Wireless Signals. London: George Newnes, Ltd. 1s. each.

Questions and Answers.—Criminal Law for Examinees. Recent Examination questions with answers. R. W. Farrin, Barrister-at-Law. Demy 8vo. 120 pp. 1930. London: Sweet & Maxwell, Ltd. 6s. net.

Questions and Answers.—Constitutional Law and Legal History. D. M. Griffith, M.A. Demy 8vo. 86 pp. London: Sweet & Maxwell, Ltd. 5s. net.

Outlines of Constitutional Law.—Daniel Chalmers, B.A., Barister-at-Law, and The Hon. Cyril Asquith, M.A., Barrister-at-Law. Fourth Edition. 1930. Demy 8vo. pp. xxvii and (with Index) 488. London: Sweet and Maxwell, Ltd. 15s. net.

Chitty's Treatise on the Law of Contracts.—18th Edition. W. A. Macfarlane and G. W. Wrangham, Barristers-at-Law. 1930. Medium 8vo. pp. ccxxxiv and (with Index) 1088. London: Sweet & Maxwell, Ltd. £2 5s. net.

The Law Quarterly Review. Vol. XLVI. No. 184. October, 1930. London: Stevens & Sons, Ltd. 6s. net.

A Treatise on the Law of Executors and Administrators. By The Right Hon. Sir Edward Vaughan Williams. 12th edition. By D. H. Parry, M.A., LL.M. and John Cherry, M.A., Barristers-at-Law. In two Vols. Medium 8vo. Vol. I, pp. cccxix and 1 to 658; Vol. II, pp. viii and 659 to 1,558 (with Index). 1930. London: Stevens & Sons, Ltd. and Sweet & Maxwell, Ltd. £5 5s. net.

The Law Reports of the Incorporated Council of Law Reporting for Ireland "The Irish Law Times" and the Incorporated Council for Law Reporting for Northern Ireland. Digest of cases decided by the Superior and other Courts in Ireland from the commencement of Hilary Sittings, 1919, to the end of Michaelmas Term, 1928. Edited by R. H. Ryland, B.A., Barrister-at-Law, Dublin: John Falconer. £2 10s. net.

A Summary of Company Law, being Revision Notes covering the Syllabuses of the Examinations of the Royal Society of Arts, The London Chamber of Commerce, and the various Professional Examinations for Accountants and Secretaries. W. De Creux-Hutchinson, Barrister-at-Law. 1930. Crown 8vo. 102 pp. London: Effingham Wilson. 4s. net.

The Annual Practice, 1931. Being a Collection of the Statutes, Orders and Rules relating to the General Practice, Procedure and Jurisdiction of the Supreme Court, with Notes, etc. By W. Valentine Ball, a Master of the Supreme Court, and F. C. Watmough, Barrister-at-Law. Assisted by Philip Clark, Head Clerk of the Action Department, and T. Hyde Hills, of Chancery Chambers. Forty-ninth Annual Issue. Large crown 8vo. pp. ccccxxxvii and 2548, with Index, 434. 1930. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. £2 net.

The Company Secretary, containing a full description of the duties of the Company Secretary with an Appendix of Forms and Precedents under the Companies Act, 1929. By W. H. Fox, F.S.A. 8th Edition. 1930. Royal 4to. pp. 464 and (Index) vi. London: Gee & Co. (Publishers), Ltd. 42s. net.

The A.B.C. Guide to the Practice of the Supreme Court. 1931. (Twenty-sixth Edition.). Part I: General Practice, by F. R. P. Stringer, of the Central Office of the Supreme Court. Part II: The Practice of the Crown Office, by W. E. Davis and D. Boland, of the Crown Office of the Supreme Court. Crown 8vo. Part I, pp. 212. Part II, pp. lxxviii. 1930. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 10s. 6d. net.

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Alice in Police Court Land.

Being a jumble of things that have happened, a little exaggerated in the telling.

V.

The Prisoner who Sat Down.

"What I was saying to you the other day about being a detective," said C.2 All to Alice. "You see, an ordinary policeman can see only what really happens or what he thinks must have happened, but a detective can see what might have happened if something else had happened that didn't happen. What's more, he knows how to tell the bench all about it too. My old father, who was a policeman before me, always said to me, 'Once you can find out what they want you're all right, my son.'"

Here the penguin got busy, and the court marched in. Lord Lyon was again in the chair.

A monkey was charged with attempting to obtain roasted chestnuts by false pretences.

"Do you admit this claim?" said Lord Lyon, in a business-like way. The monkey scratched his head.

"His lordship asks whether you wish to be tried by a jury and if not whether you plead guilty to the charge," said the tactful Secretary Bird, who went on to explain the nature of false pretences, as the statute directs. Punctilious as he was, he could not explain the particular false pretence alleged, because no one had alleged anything yet, but he could not let down Lord Lyon with too big a bump.

"May I sit down?" said the monkey.

"Certainly NOT," roared the lion. "I'll have proper respect shown to the court while I'm here."

"But I want to write down notes of what's said," said the monkey.

"BEHAVE YOURSELF PROPERLY," thundered the lion, "and stand to attention."

A sardonic looking badger, in counsel's seat, called out to the monkey, "Sit down and take no notice of what his lordship says. No one can make you stand."

"That's Mr. Badger," said C.2 All to Alice in a low voice. "He's the son-in-law of the great Mr. Chaffanbrass, who defended in the famous Orley Farm Case.* He just doesn't care for man or beast, and my opinion is, his lordship's afraid of him."

It looked like it, for although the monkey, rather apprehensively, sat down, nothing more was said, and the case proceeded on the basis of a plea of not guilty. The unhappy Secretary Bird dared do no more to get things into regular order.

A cat was the only witness, not the splendid animal whose misdeeds had amused Alice on her first day in the police court, but a scraggy beast with one ear in tatters and his whiskers singed off his face.

He related that he was walking down the street with the monkey when they saw a fire, and, as it was a cold day, they went to warm themselves. Over the fire was a tray of roasting chestnuts, and the man to whom they belonged had gone to look at the clock in the public-house. Then the monkey should say: "I say, cat, I'll get you some of those chestnuts," and had seized his, the cat's, paw, and dabbed at the chestnuts with it, not only burning the paw, but singeing his whiskers, he was that close to the fire underneath. Then the man had come out of the public-house, wiping his mouth with the back of his hand.

"Like the old woman in Dickens," remarked Alice thoughtfully, noticing the plagiarism.

"What's plagiarism?" said C.2 All, scenting another long word to misuse. "Is it an offence under the Vagrancy Act?"

"No-o," said Alice.

"Fraudulent misappropriation of ideas," said the badger, who had caught what was being said, as he seemed to catch everything.

The penguin was just going to say, "Si-lence," when he met the badger's wicked red eyes and subsided. No one ventured on rebuke to him.

The cat went on to say as how the man had caught him by the tail, but a policeman, whose name he thought was Constable Noswatswat, had taken the monkey into custody. And please his lordship, might he have his expenses, he was a very poor cat and had been very badly treated.

The case went on, the monkey making a great show of taking notes, but chattering inconsequently whenever Lord Lyon gave him a chance to speak, which was not often. In the end he was convicted and severely dealt with.

The badger snorted contemptuously. "You appeal," he said to the monkey. "That's not false pretences. It's attempted larceny, if anything, and you never consented. I'll get you off at the Sessions."

Lord Lyon began a roar and then stopped short. "Why the devil didn't you stop me?" said he to the Secretary Bird afterwards. "It seemed to me it was false pretences. He pretended to the cat he was going to get the chestnuts, and then treated him in that disgraceful way. That badger is an insufferable brute, but somehow he always seems to come out on top with the judges."

When C.2 All said "Good-bye" to Alice he winked solemnly. "Now what does that mean?" thought Alice.

* Reported 13 Trollope.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Costs under Small Tenements Recovery Act, 1838.

Q. 2041. The landlord of a dwelling-house makes an application to the justices under the Small Tenements Act, relying on s. 5 (1) (i) of the Rent Act of 1920, as re-enacted by s. 4 of the Act of 1923. The application is dismissed and the justices are inclined to grant the tenant costs against the landlord, but the latter's solicitor objects on the ground that no costs can be granted under the Small Tenements Act. The solicitor for the tenant points out that as the application is subject to the Rent Acts the court has power thereunder to award costs, in the same manner as it has in the County Court. Will you please advise us as to which contention is correct, and if there is any authority.

A. The contention on behalf of the landlord is correct, as the justices are exercising jurisdiction under the above Act, which confers no power to award costs. No difference is made by the fact that the application is subject to the Rent Acts, as these merely regulate the manner in which the landlord's rights and remedies shall be exercised. Proceedings are never originated under the Rent Acts, the object of the latter being to provide certain defences either under the County Courts Act, 1888, or under the first-named Act, *supra*. There is no reported decision on the point.

Alteration of Controlled House.

Q. 2042. A controlled dwelling-house was by verbal agreement between the landlord and tenant converted into a shop, the landlord paying the cost of structural alterations and the tenant paying a slightly increased rent. Please advise whether (1) the dwelling-house or the portion used as a shop become de-controlled in view of the conversion taking place after the principal Rent Act came into force ; (2) an increase of rent was permissible under s. 2 (1) (*a*) of the Act ?

A. The structural alteration was apparently not sufficiently extensive to cause the premises to lose their identity, and therefore the dwelling-house is not de-controlled within the decision in *Phillips* v. *Barrett* [1922] 1 K.B. 222. The same tenant is still in occupation of both house and shop, and therefore there is no de-control under *Phillips* v. *Hallahan* [1925] 1 K.B. 756. The conclusion is that the tenant is still protected as regards the dwelling-house portion, under *Gidden* v. *Mills* [1925] 2 K.B. 713, and, as there appears to be no reason to treat the shop as a separate holding, that also is still controlled. The answers to the above questions are therefore (1) neither house nor shop is de-controlled ; (2) an increase of rent is permissible under s. 2 (1) (*a*).

Settlement by way of Compromise—Desire to Revoke.

Q. 2043. A and B, who are husband and wife with a child four years old, have differences and agree to live apart from each other. A dispute arises as to the ownership of certain property conveyed by the husband to the wife before the separation. Proceedings are instituted by the husband for the return of the property, but the action is settled, one of the terms being that the property in dispute forms the basis of a deed of settlement between husband and wife under which some income goes to the wife for life and the other income goes to the husband for life, and from and after the death of the survivor of the husband and wife, the trustees are directed to stand possessed of the capital and income of the property settled in trust for the child. This deed of settlement, as indicated above, embodies terms of the settlement of the action between the husband and wife approved by counsel for both sides, as a result of which the proceedings were settled with the consent of the court. The husband and wife have now been reconciled and desire to destroy the deed of settlement, or, in other words, they desire to deal with the settled property without being restricted by the covenants and conditions in the deed of settlement. Can this be done in view of the interests of the child above referred to ? Is an application to the court for consent involved if the husband and wife now wish to disregard the settlement in view of the child's interests ?

A. Unless the deed contains a power of revocation it cannot be revoked. See *Phillips* v. *Mullings* (1871), 7 Ch. App. 244. If there is a possibility of other children of the parties being born, it is thought possible the court might authorise a variation to bring in after-born children on the ground that the intention was to benefit the issue of the marriage.

Stockbrokers' Half-Commission.

Q. 2044. Is it held to be permissible for a solicitor to retain and not credit to his client the share of commission allowed by a broker on sale of shares ? Usually brokers allow banks and solicitors half-commission, and many solicitors, I believe, credit the share in solicitor-and-client accounts, but this has been objected to by brokers as a betrayal, as they are not allowed to share with customers either directly or indirectly.

A. The commission may only be retained by the solicitor if the client knows of the allowance and consents to the solicitor retaining the amount. The onus is on the solicitor to show the client's knowledge and consent by some evidence in writing. See *Jordy* v. *Vanderpump* (1920), 64 Sol. J. 324. The practice of crediting the share of commission, in solicitor-and-client accounts, is due to the desire to avoid any question of making a secret profit, and cannot aptly be described as a " betrayal." If this implies an appeal to professional loyalty it is inadmissible to cloud the issue as to the solicitor's duty to his client, this being the paramount consideration.

Mortgage—Costs of Inspection of Property.

Q. 2045. A is the mortgagor of some property governed by the Rent and Mortgage Restriction Act, 1920. Recently B, the solicitors to the mortgagee, have applied to A for his permission to inspect the property, and asking for their surveyor's costs of £1 1s. and £3 3s., their charges. It is clear, of course, that by s. 7 of the Rent Act, 1920, mortgagees have the right to inspect property subject to a mortgage, but I cannot see that there is any authority to charge the mortgagor with such costs. My client declined to pay anything, and he has now received a letter from the mortgagee's solicitors stating that counsel has advised that these costs are payable now or may be added to the mortgage moneys when discharged. I myself, however, am unable to find any authority for such charges. What is your opinion ?

A. Apart from the provisions of the Rent Act, 1920, the mortgagee would have no right to enter and inspect. If the inspection and charges were reasonable and proper we express the opinion that, as the charges were incurred under the authority of the Act (that is to say, being in connexion with actions authorised by the Act) they can be added to the price of redemption, but we do not suppose that they are immediately payable by the mortgagor. We have been unable to trace any direct authority on the point.

Mortgage to Secure an Infant's Money—Procedure—Income Tax.

Q. 2046. A is proposing, on behalf of his infant daughter B, who lives with and is maintained by him, to advance to X on a mortgage of a freehold house a sum of £450, which belongs to B, and which at the moment is in the form of National War Savings Certificates. Clearly the mortgage cannot be taken in the name of the infant B. Will it be sufficient if a mortgage in the ordinary form with A as the mortgagee is executed coupled with a short declaration of trust by A that the £450 advanced on that particular mortgage is the property of his daughter B? If not, will you please state what you consider to be necessary in the circumstances? A further point of some importance is that A wishes, if possible, to reclaim on behalf of B, the infant, the income tax deducted by X, the mortgagor, when paying the mortgage interest. (B has no property other than the National War Savings Certificates mentioned above.) Will the production of the mortgage and declaration of trust to the inspector of taxes be sufficient to enable A, on behalf of B, to demand a refund of such tax? If not, is there any way in which the transaction can be arranged so that this object can be achieved?

A. We express the opinion that the proposed procedure is quite satisfactory, and that no difficulty should be experienced with the inspector of taxes. It might be prudent to preserve evidence of the actual ownership by the child of the savings certificates.

Assignment of Equity of Redemption—Whether Mortgagor has Right to Compel Redemption.

Q. 2047. In the year 1929, A, the owner of freehold land upon which B holds a mortgage, sold same to C subject to the mortgage. The conveyance contains an undertaking by C to pay the mortgage money and interest and indemnify A against same. A is now desirous of getting rid of his liability. Has A power to pay off the mortgage, and, if so, what is the procedure? Should he give notice to B or C, or to both? Who will be parties of the re-conveyance? Can you refer me to the necessary precedent? Should the mortgage now be registered under the Land Charges Act, 1925?

A. The position of A is a rather unsatisfactory one. In *Kinnaird* v. *Trollope* (1888), 39 Ch. D. 636, it was conceded in argument and apparently accepted by the court (Stirling, J.) that, where a mortgagor has assigned the equity of redemption, he cannot claim against the mortgagee to redeem unless the mortgagee demands payment from him. Further, the mortgagor cannot require the mortgagee to transfer the mortgage under s. 95 of L.P.A., 1925, which, like the previous provision for which this section is substituted, is confined to a mortgagor entitled to redeem: *Teevan* v. *Smith* (1882), 20 Ch. D. 724. Unless, however, C's covenant to repay is qualified by some such provision as "when the mortgage money is demanded" (see precedent in Key and Elphinstone, Vol. I), it seems that A can bring an action against C requiring him to comply with his covenant to pay, see *Trott* v. *Smith* (1844), 12 M. & W. 688, in which case, however, there was apparently no covenant by the mortgagor to pay and the proviso for redemption was for re-conveyance on payment six months after demand, so the action failed for want of demand. If possible, A should arrange with B to transfer the mortgage to him. If he cannot do this he should give notice to C requiring him to redeem.

Public Admission to Weddings.

Q. 2048. The trustees of a nonconformist church have registered the building for the solemnisation of marriages under the Marriage Act, 1836. Marriages take place in the church from time to time, and the trustees desire to regulate the admission of the public thereto owing to complaints of overcrowding, and untidiness and litter left in the church. What is the meaning of the words "the marriage shall be solemnised with open doors" in s. 20 of Marriage Act, 1836? These words must surely be construed reasonably and do not give the public the right of unrestricted admission to the church. Can the trustees take steps to prevent the general public from crowding into the church and regulate admission by one door only, and also limit those admitted to the invited guests of the contracting parties?

A. The proviso in the Marriage Act, 1836, s. 20, as to "open doors" means that the marriage must not be celebrated clandestinely, as explained by Dr. Lushington in *Campbell* v. *Corley* (1856), 4 W.R. 675. The words therefore do not give the public the right of unrestricted admission to the church, and the trustees can take steps to prevent the general public from crowding in, either (1) by regulating admission by one door only, or (2) by limiting those admitted to the invited guests of the contracting parties. Although the statute refers to "open doors," the opinion is given that this does not imply that two separate entrances must be open, as the expression is either used rhetorically, or refers to the double doors often found at an entrance to a church. The limitation of admission to invited guests is understood to be discountenanced in some dioceses, but there is no objection to this, as the guests themselves sufficiently represent the public. The need for regulation of admission shows that the marriage has attained wide publicity, and is therefore the reverse of clandestine, which is the mischief aimed at by the statute. Some nonconformist churches are nowadays advertised as being open daily for prayer and meditation, and some members of the public might seek to avail themselves of this as a reason for demanding admission just before a fashionable wedding. Such a notice, however, is only an invitation, which is subject to the exigencies of public worship, and therefore confers no right to preferential consideration for claimants to admission with that alleged object, viz., meditation.

Assault under the Hire-purchase System.

Q. 2049. In 1926, my client A purchased from B a piano on the hire-purchase system. He completed his payments in 1929, but was astonished recently to receive a call from C, a professional strong man, on behalf of B, to retake the piano under the terms of the agreement, B having obviously made a mistake. On my client refusing him admission, he tried to force an entry and assaulted my client, who was barring his way, and seriously injured him. It appears that C is well known in his line of business, and has a notorious record for violence, which record, it can be proved, was well known to B. A is now considering his standing—should he bring an action for damages against B for the assault by C? A consultation of the authorities bearing on the liability for the acts of his independent contractor appears to show that the "inherent danger" mentioned by the text-books will only serve to fix the principal where the public using highways are endangered. The tortiousness of the act directed appears in the text-books as a source of the principal's liability in such cases, but here again, highways invariably crop up in the reports of cases. The other exceptions to such a principal's non-liability appear to be founded on the principles of nuisance. I should be very much obliged if you would advise:—

(*a*) Whether there are any valid cases known to you in which the decisions are free from highways and nuisance, and which would support my client's case.

(*b*) Whether you know of any authority for the proposition that, in the case stated, B owed A any duty of care in the choice of his myrmidon, or whether C could be treated on the principles applicable to animals, so that scienter could be proved, as mentioned above.

(*c*) Whether a contention that C was B's servant would stand any chance, and if so, whether the principle of *Lloyd* v. *Grace Smith* would be applicable. (C has no regular work, but is frequently employed by B for retaking of chattels).

(*d*) Generally.

A. (*a*) The decisions in the following cases are free from highways and nuisance, and support the case of the questioner's client: (1) *Flockton* v. *Pender*, referred to in a Practice Note entitled "The Measure of Damages in Trespass" in our issue of the 2nd August, 1930 (74 Sol. J. 516). A distinction is that in the last-named case the defendant himself was present, but there was a conflict of evidence as to the extent of his participation. Nothing seems to have turned on the defendant's presence, however, and the present case is stronger, as in *Flockton* v. *Pender*, *supra*, there was no battery, although the circumstances possibly amounted to an assault in law. (2) *Dyer and Wife* v. *Munday and Another* [1895] 1 Q.B. 742, in which there had been a conviction and fine, as might have been the case on the facts stated in the question. The present case is also stronger in this respect, as in *Dyer* v. *Munday*, *supra*, the defendant did have a claim of right to the furniture, whereas in the present case he had none.

(*b*) No authority is known for either of these propositions.

(*c*) The contention that C was B's servant gives rise to the cause of action which should be relied upon, but, instead of *Lloyd* v. *Grace Smith & Co.* [1912] A.C. 716, the principle applicable is that in *Dyer* v. *Munday*, *supra*.

(*d*) The claim should be based primarily upon trespass, the assault being a secondary cause of action arising out of the trespass. A recent discussion of the subject, but from a different angle, will be found in *Poland* v. *John Parr and Sons* [1927] 1 K.B. 236.

Adopted Child and Orphan's Pension.

Q. 2050. A adopted a child from certain guardians of the poor in the year 1926. A is now entitled to benefits under the Pensions Acts, and on his death his wife and children would also be entitled to widow's and children's benefits respectively. No formal order by a court of competent jurisdiction has ever been obtained in respect of the *de facto* adoption of the child mentioned above. On the death of A, would the child be entitled to the benefits conferred by the Pensions Acts, and would the position be affected in any way if a formal order of the court was obtained?

A. The Widows', Orphans' and Old Age Contributory Pensions Act, 1929, s. 24, provides that an adopted child (within the meaning of the Adoption of Children Act, 1926) shall be treated as being the child of the adopters for the purposes of the principal Act of 1925. On the death of A the child would therefore not be entitled to the benefits of the Pension Acts by virtue of the *de facto* adoption at present existing. The position would be changed, however, if a formal order of the Court were obtained, either by A and his wife jointly, or by one of them in the lifetime of the other, as laid down by the above section. It is assumed that no other allowance or orphan's pension is payable in respect of the child, e.g., in right of its natural parents, as this is a ground for disqualification under the proviso to the above section.

Freeholds—Secret Trust—Mortgage in Breach of Trust—Protection of Equity of Redemption.

Q. 2051. C.D., the wife of A.B., a few years ago, bought licensed premises with A.B.'s money when he was abroad in America, and as he was abroad the deeds were made out in C.D.'s name. C.D. has now mortgaged the property. A.B., who is at present in America, desires C.D. to transfer the property to him, but she has taken no notice of our request and threat to institute proceedings. It is thought that C.D. will try and dispose of the property and get away with the purchase money, as we think she has reason to believe that A.B. is about to institute divorce proceedings against her. As A.B. is abroad, what steps can we take on his behalf to prevent this and to protect the property until A.B. returns from America, when we can obtain more full instructions. Can any land charge be registered?

A. We do not think that any registration under L.C.A., 1925, is available. We suggest that A.B.'s solicitors should, on his behalf, give notice to the mortgagee of his interest in the equity of redemption. While this would not prevent the mortgagee from executing a vacating receipt in favour of C.D., or concurring in a conveyance to a purchaser from C.D., yet it would be his duty to show (in the receipt or conveyance) A.B.'s rights (*Pearce* v. *Morris*, L.R., 5 Ch. 229; *Tarn* v. *Turner*, 39 C.D. 456; and "White and Tudor's Leading Cases in Equity," 8th Ed., Vol. II, p. 74, where these two cases are cited) in support of the statement that the form of reconveyance should show the right to redemption of persons having other interests. The mortgagee should be advised of his duties, and if he carried them out, it would probably effectively prevent C.D. from completing a sale.

Settlement to Provide for Children's Maintenance, Education and Advancement.

Q. 2052. In view of the excessive income and super-taxes and death duties clients desire to settle property or securities upon trusts for the maintenance and education and advancement of children until twenty-five years of age and thereafter absolutely. Is there any good modern precedent for such a case, and is it advisable if property or securities be purchased for the purpose to merely convey or vest same in trustees upon trust for sale, etc., and to hold proceeds upon trusts to be declared by a separate deed? "The Conveyancer," Vol. VII, p. 659, contains a precedent of a settlement for two named children, but there appears to be none to cover children as a class. A further question arises on stamp duty if a separate declaration of trust be executed by the trustees. It is assumed a ten shilling stamp only is necessary if *ad valorem* is paid on the conveyance, and that the declaration of trust might also relate to and operate on any further property to be acquired and vested in the trustees on the same trusts.

A. We regret that we are not acquainted with a precedent applicable to a class of children. Another precedent in favour of a named child is to be found on p. 231 of "Rose's Conveyancing Precedents" (published 1925). There would be no object in having two documents if investments were settled, but if real estate was settled by way of trust for sale two documents would, of course, be necessary. We think that the assumption with regard to the stamp duty is correct. *Ad valorem* duty must, of course, be paid upon the conveyance of the additional property.

Lost Incomplete Deed—Liability for Misuse.

Q. 2053. About two years ago we received instructions and prepared a conveyance from A to B of certain freehold premises. The conveyance was executed by the vendor, but we have no record that the same was executed by the purchaser or was stamped. Shortly after execution by the vendor we moved our offices, and since that date the conveyance has not been found. A full search was made for the same, and it does not appear to be in the possession of A or B or of ourselves. Accordingly we prepared a fresh conveyance, which was executed by A and B and was duly completed and stamped. No reference was made in the second conveyance to the fact that it was intended to be in place of one already executed nor anything to show that it was other than an ordinary conveyance. If the first conveyance should be subsequently found and misused by B, would there be any liability attaching for such use at the hands of an innocent purchaser or mortgagee either against ourselves or against A? What steps could be taken to try and prevent this?

A. We do not think that any liability would attach to our subscribers or to A for any misuse the missing document might be put to if found by B or anyone else. We regret that we are unable to suggest any precautions. If our subscribers and/or A are apprehensive of possible trouble we fancy that an indemnity could be obtained from an insurance company at a very modest premium.

Notes of Cases.

Court of Appeal.

United Fruit Company *v.* **Frederick Leyland & Co. and Roberts Brining & Co.**

Scrutton, Lawrence and Greer, L.JJ. 17th October.

CONVERSION — DETINUE — PERISHABLE GOODS — BANANAS — INJUNCTION TO RESTRAIN DEALINGS—JURISDICTION OF COURT—ORDER VARIED—ORDER FOR SALE OF PERISHABLE GOODS AND PAYMENT OF NET PROCEEDS INTO COURT—R.S.C. ORDER 50, r. 2.

Appeal from an order of Bennett, J., sitting in the Vacation Court.

This appeal raised the question whether in an action for conversion or detinue of marketable and perishable goods, namely, bananas, forming part of a bulk cargo and quite unidentifiable from the rest of the cargo, the court had jurisdiction to grant an injunction restraining the defendants from dealing with the goods otherwise than by handing them to the plaintiffs. The plaintiffs, the United Fruit Company were a large American company, who had very large dealings in importing fruit into Europe and elsewhere. They had for some years been exporting fruit from Colombia. They had a large number of contracts with banana growers in Colombia and they dealt with about 97 per cent. of the exportable bananas from that country under contracts which they had made with the growers. These contracts were for periods of years—four years, five years, six years and ten years, and in the case of the bananas which came under the plaintiffs' contracts, the fruit became the property of the United Fruit Company when it was cut or severed from the trees. The contracts in question provided that all the produce of the named estates was to be sold to the United Fruit Company. Recently, some of the growers, wishing to break the plaintiffs' monopoly, and find another outlet for their produce, formed a co-operative society and the defendants had made contracts with that society. After a preliminary shipment in the "Atlantian," there was a larger shipment of bananas in the "Daytonian" with regard to which the plaintiffs were on the watch and in respect of which they had what they thought to be sufficient evidence that numbers of shipments were being sent from growers who had contracts with the United Fruit Company, and from estates which were covered by those contracts. The co-operative society with whom the defendants dealt denied that they had bought or shipped any bananas coming from the estates which were covered by the contracts of the United Fruit Company. On the bananas coming to England the matter came before Bennett, J., in the Vacation Court, and the learned judge made the following order: "It is ordered that upon the plaintiffs paying into court to the credit of this action . . . as security for the performance of their . . . undertakings as to damages, £2,500 . . . Messrs. Frederick Leyland & Co. Limited and Messrs. Roberts Brining and Co. Limited, their respective agents and servants and every of them be restrained and an injunction is hereby granted restraining them and every of them from converting to their own use or dealing with or in any way disposing of 2,041 stems of bananas, the property of the plaintiffs now on board the "Daytonian" or any other bananas, the property of the plaintiffs on that ship, save by delivery of the same to the plaintiffs or their agents." The defendants appealed.

THE COURT held, that the above order was unsatisfactory, because it did not provide for the fact of the goods being perishable, nor did it identify the goods. The order must be varied by providing for the sale of selected 2,041 stems of bananas and payment of the proceeds into court to abide the result of the action.

COUNSEL: *Sir Walter Greaves-Lord*, K.C., and *H. J. Nelson*; *James Dickinson*, K.C., and *W. L. McNair*; *D. N. Pritt*, K.C., *Henn Collins* and *A. T. Denning*.

SOLICITORS: *Godfrey Warr & Co.*, for *Weightman, Pedder and Co.*, Liverpool; *Hill, Dickinson & Co.*; *Biddle, Thorne, Welsford and Gait*.

[Reported by T. W. MORGAN, Esq., Barrister-at-Law.]

In re **Blücher (Prince).**

Lord Hanworth, M.R., Slesser and Romer, L.JJ.

24th October.

BANKRUPTCY—PROPOSED SCHEME FOR COMPOSITION WITH CREDITORS—SIGNATURE BY DEBTOR'S SOLICITOR—DEBTOR'S OWN SIGNATURE ESSENTIAL—BANKRUPTCY ACT, 1914 (4 & 5 Geo. 5, c. 59), ss. 16, 112, 149.

Appeal from a decision of the Registrar in Bankruptcy.

The debtor, Prince Blücher, prepared a scheme for composition with his creditors, on the basis of a payment of 5s. in the £, but being too ill to take any active steps in the matter, the scheme was signed by his solicitor. Section 16 (1) of the Bankruptcy Act, 1914, enacts that "where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs . . . lodge with the official receiver a proposal in writing signed by him . . ." The Registrar upheld the objection taken that the scheme was not signed by the debtor himself, and refused to call a meeting of the creditors. The debtor appealed. He contended that the signature by the solicitor was sufficient, and relied on s. 112 of the Act, which provides that bankruptcy proceedings may continue after a debtor's death, and on s. 149, which enacts that in such proceedings a corporation may act by its officers, a firm by a partner, and a lunatic by his committee or *curator bonis*.

Lord HANWORTH, M.R., said that it might seem strange and unfortunate that a person who was ill should be in a worse position than a lunatic, but the Act said clearly that the signature must be that of the debtor himself and the court must adhere to the words used.

COUNSEL: *Tindale Davis* for the appellant; *Rowland Burrows* (*The Attorney-General*, Sir William Jowitt, K.C., with him) for the Official Receiver.

SOLICITORS: *Burch & Co.*; *Solicitor to the Board of Trade.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Rex *v.* **Lapworth.**

Avory, Swift and Acton, JJ. 20th October.

EVIDENCE—HUSBAND AND WIFE—ASSAULT ON WIFE—CRIMINAL PROSECUTION—WIFE A COMPETENT AND COMPELLABLE WITNESS.

This was the appeal of John Henry Lapworth against a conviction at Warwick Assizes before Rowlatt, J., for causing grievous bodily harm to his wife. He was bound over. The appellant's wife, when called at the trial, said that she would rather not give evidence against her husband. Rowlatt, J., ordered her to give evidence, however, and the only question on the present appeal was whether the wife, being a competent witness for the prosecution, was also a compellable witness.

AVORY, J., giving the judgment of the court, said that the question was whether in a case of personal violence used by a wife to her husband, or a husband to his wife, the husband or wife were competent and compellable witnesses for the prosecution. He had no doubt that at common law the husband or wife was a competent witness. If it was once established that the wife was competent it followed that she was compellable at common law. In other words, she having made her complaint, or independent evidence of an assault by the husband having been given, she was bound to answer any questions put to her. In other words, she was compellable. He doubted whether the question had ever been raised before in this direct way. It had always been assumed that, if a woman was

reluctant to give evidence, it was the duty of the court to ascertain the facts, and, if necessary, to compel her. He took the view that if the known state of the law was such as to confer competency without a statute, then compellability followed as a matter of course. The appeal failed.

COUNSEL.—*Douglas Jenkins* for the appellant; *Anthony Hawke* for the Crown.

SOLICITORS: *The Registrar of the Court of Criminal Appeal; the Director of Public Prosecutions.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Stephen *v.* Stephen.

Lord Merrivale, P. 30th June.

DIVORCE—PERMANENT MAINTENANCE—WIFE'S INCOME PRECLUDING PRESENT PROVISION—REGISTRAR'S ORDER PROVIDING FOR CHILDREN BUT RESERVING WIFE'S LIBERTY TO APPLY—RESPONDENT'S APPLICATION TO STRIKE OUT "LIBERTY TO APPLY" SUCCESSFUL—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 190, sub-ss. (1) and (2).

In this summons, adjourned into court, respondent husband asked that the words "but liberty to apply thereon" be struck out from an order of the registrar in proceedings for permanent maintenance. The registrar found the joint incomes of the parties to be approximately £1,375, the wife deriving £500 per annum from a marriage settlement. There were two children of the marriage, of whom the wife had been given custody. The registrar's order directed the respondent to pay £120 per annum after deduction of tax in respect of the children, and continued "no order for maintenance of wife, but liberty to apply thereon." Counsel for the respondent, in support of a summons to strike out the words "but liberty to apply thereon," submitted that it was the intention of the Legislature that the court should finally determine the financial relations of the parties on decree absolute. Counsel for the petitioner said that the effect of striking out the words would be to prevent the wife from asking the court for maintenance thereafter, if the respondent's means showed a marked increase. In the alternative, if a *pro forma* sum of, say, £1 per annum were ordered to be paid by the respondent, the petitioner's remedy could be kept open to her.

Lord MERRIVALE, P., in giving judgment, said that the present class of case had caused difficulty to the registrars in disposing of petitions for maintenance. It was obvious that the means of the wife exceeded the amount of any order that would ordinarily be made on the basis of the total of the joint incomes. The application for an order for the maintenance of the wife therefore failed, but it was urged that the husband might be better off in time, and that therefore there ought to be liberty to apply. In his (his Lordship's) view, the object of the statute was that the financial relations of the parties should be finally determined on the dissolution of the marriage. Referring to the Judicature (Consolidation) Act, 1925, s. 190, sub-s. (2), his Lordship said that provision had been made for enlarging an order in the case of a wage-earning husband, but on the facts of the present case, no fluctuation of income was shown, the figures denoting a set state of affairs. The question was whether he should insert in the order words postponing the allotment of maintenance. No case had been shown for keeping the matter open and the words "liberty to apply" would therefore be expunged from the order.

His Lordship made an order for the wife's costs, but refused leave to appeal.

COUNSEL: *Noel Middleton* for the respondent; *H. B. D. Grazebrook* for the petitioner.

SOLICITORS: *Edgar Hammond & Co.; Valpy, Peckham and Chaplin.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Legal Fictions.

IX.

Select Inscriptions Suitable for Legal Fly-leaves

(These inscriptions, with one or two exceptions, are rejected advertisements retrieved, at enormous expense, from the Publishers' waste-paper baskets, by offering the office boy a secret commission—to wit, the sum of Four Pence, a Penny Dreadful, and a Packet of Gaspers—contrary to the Statute 6 Edw. 7, c. 34.)

1. For CHITTY'S STATUTES.

THESE LITTLE VOLUMES
are not only
A MONUMENT
To The Editor's Industry
With Paste and
SCISSORS
Wherewith he has Excised
A L L
The Repealed Sections
But will make clear
to the
MEANEST INTELLIGENCE
the
APPALLING CONFUSION
of our
S T A T U T E L A W.
What greater boon could Parliament
Confer upon the nation,
Than giving us, for many years,
A rest from Legislation?

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THIS VOLUME
is the
TONGUE
which
W H I T E H A L L
Annually Protrudes
In the Direction Of
W E S T M I N S T E R.
Some people still believe the Laws
Which guide the British Nation
Are really made by Parliament,
The fount of Legislation.
This Book should undeceive them quite,
And prove to demonstration
There's more than twice as much of Departmental Legislation.

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of
METROPOLITAN, COUNTY AND OTHER BOROUGHS
and of
URBAN AND RURAL DISTRICTS AND PARISHES
A Complete Exposé
of the
PITFALLS
Digged for them by the Law
and
A Guide
To Those Other and Pleasanter
PITFALLS
Which the Law encourages Them
To Dig for OTHERS

And Not Least For
PEDESTRIANS
Who Find the Roads Invariably
U P.
If the Contents do not please
You can pave your streets with these.

4. For SCRUTTON ON CHARTERPARTIES.
Here
GENTLE READER
You Will Find
An Exhaustive
INDEX
To the
MEANINGS
Placed by the
COURTS
On a Vast Mass of
COMMERCIALESE JARGON
Which
On the Face of It
Has Obviously
NO MEANING WHATEVER.
When Clients send me work for which
I do not care a button
(Like Charterparties) I rely
Upon Lord Justice SCRUTTON.

5. For OSWALD ON CONTEMPT.
THE OBJECT
Of
THIS BOOK
Is To Teach Its Readers
The Gentle Art
Of
SNAPPING THEIR FINGERS
At The
COURTS
WITH SAFETY AND SATISFACTION
But
It Also Warns Them
EXPLICITLY
What Is Likely To Happen
If They Go
TOO FAR.
When your Appeal's dismissed, don't say
"I think your Lordships Asses";
But this: "The judgment, with respect,
My comprehension passes."

6. For BYLES ON BILLS.
THIS CHATTY VOLUME
Affords
A Comprehensive Guide
To
L I F E
In
THE BEST FINANCIAL CIRCLES
And
E X P L A I N S
With Perfect Clarity
What You
C O U L D
And
W O U L D
D O
If You Had Any
M O N E Y
TO DO IT
W I T H.
The normal person's views on Bills
Are terse, unedifying,
As "Damn the thing," "I can't pay this,"
"My Bank will soon be shying."
Sir Barnard BYLES expanded his,
And so gained fame undying.

7. For a Law Reporter's Note Book.
A TEMPLE.
Wherein
THE JUDICIAL WISDOM
OF
HIS MAJESTY'S JUDGES
Is
ENSHRINED
Whence
A Small Percentage
Will Be
EXHUMED
But Wherein
The Greater Part
Will Appropriately Find
DECENT And PERMANENT
BURIAL.
It is not every Judgment
That I shall stay to write:
And many weighty *Dicta*
Will never see the light.
When Judges give their judgments
At quite excessive speed,
THEY DO NOT GET REPORTED.
(My warning let them heed.)

In Lighter Vein.

Another Anniversary.

On the 10th October, 1723, Lord Cowper died, aged sixty or, as Ambrose Philips sang of him—

". . . Cowper beamy in the morn
Of life, still brightening to the noon.
Scarce verging on the steep decline,
Hence summoned while thy virtues radient shine."

As a lawyer, as a statesman and as a patron of letters, his reputation stands high among the Chancellors. He may further claim that none who have held the office can have been the subject of a larger amount of complimentary verse.

Hughes, the poet, asked for no other epitaph than this:—

"Here lies his clay to earth confined,
To whom great Cowper once was kind."

"Cowper's manner" received complimentary notice in the lines of the sarcastic Pope, while Sir Charles Hanbury Williams paid an elegant tribute to his oratorical gifts.

"Some strains of eloquence which hung
In ancient times on Tully's tongue,
But which concealed and lost had lain
Till Cowper found them out again."

This same eloquence won the praise of the cultured and critical Lord Chesterfield for "the purity and elegancy of his style and the gracefulness of his action."

Upright as a judge and graceful as a man, he left behind an honourable name. His arms adorn the bay in Middle Temple Hall and his portrait hangs among the engravings on the stairs at Gray's Inn.

A Filial Fiction.

Perhaps when, in due time, father and daughter, or even mother and son, come into court to represent conflicting interests, we may look for livelier incidents than when the protagonists are simply father and son.

Hitherto, the proper function of the advocate's mother has been silence. Such was certainly the case when a certain desperate young lawyer tried to use his venerable parent as a pretext for an adjournment. Delay was of the utmost importance to his client, but postponement was unlikely

He therefore represented to the court that he had just received news that his mother had been taken dangerously ill.

"Under the circumstances," he said, "much as I regret protracting an already lengthened session, I must request that this case be postponed. My feelings are so painfully agitated that I should be unable to do justice to the case, feeling as I do that my proper place is at the bedside of my mother."

The sympathetic judge was willing to grant any adjournment required, and had already risen to go when a shrill, shocked voice from the public gallery cried out: "James, James, how often have I chastised you for lying?"

The good old lady in question was not only in excellent health, but had, in fact, come to hear her son plead.

A Dutiful Son.

Laymen last week were very merry over the intelligence that the son of Sir Henry Curtis Bennett, K.C., had referred in court to his father as "my learned friend, Sir Henry." For a time whose hurry has rather trimmed the ceremonies of courtesy, formality between relatives comes as a surprise.

Of course, fathers and sons have often met in court, generally without incident, but occasionally with an odd result. Such was the case of Nathaniel Clarke, who later became a county court judge, when he found himself briefed against his father at Warwick.

In replying to some technical objection, he said he would show how futile and utterly absurd were the arguments of the learned counsel on the other side. Instantly, up jumped his venerable opponent in anger and astonishment. "Sit down, sir!" he cried. "Sit down! How dare you use such words to your poor old father?" And such were children in those days, that the young man did sit down and even the learned judge, Lord Denman, could hardly persuade him to rise again.

Societies.

University College.

Legal Duty.

On 15th October, Mr. Justice McCardie took the chair at University College, when Professor C. K. Allen delivered the first of two lectures on legal duties. Professor Allen said:—

Beyond all the controverted questions of jurisprudence lies the master-problem, of whether law exists for the sake of enlarging or for the sake of restricting the liberty of man. Akin to this problem is the question of whether law is to be regarded primarily as a system of rights or of duties, for legal right, however we define it, must mean some enlargement, or at least some guarantee, of individual freedom of action or of enjoyment; while legal duty denotes some restriction, necessitated by the interests of others, upon self-interest. Does law the better enable the individual to live for himself in a world which exists for him, or the better enable him to live in a world for the sake of which he exists? The conventional doctrines of jurisprudence return the answer that every legal system is made up, and must be made up, both of rights and duties, and that the two things are reciprocal constants. Certain modern doctrines deliver a bold challenge to this assumption that right and duty are the constant co-existent and interdependent subject-matter of law.

The Attempt to Eliminate Subjective Right.

The first is the positivist doctrine of Duguit. He rejects—rightly, as I believe—the absolutistic doctrine that law originates solely with the State. Law originates, of necessity, with society itself. It is anterior and superior to the State. Next, he attacks the individualistic conception of natural rights. He says that rights by nature mean nothing. It is impossible to conceive man as anything else than a social creature, involved in an inescapable plexus of relationships with his fellows. These relationships, Duguit holds, are never of rights but always of duties. In reality, the only law which governs the individual is the social law. This is the law of social solidarity. Consequently a rule of conduct imposes itself on social man by the very nature of things, a rule which may be formulated thus: to do nothing which is prejudicial to social solidarity under either of its two forms and to do everything which tends to realise and develop social solidarity. The rule is individual also in that it applies and can only apply to beings possessed of a conscience and a will. Man has *droits*: but they are only powers to do his duty. Individual liberty is liberty to perform one's social duty. Even the State is subject to the supreme objective law.

The fundamental weakness of this new "objective law" is that it substitutes for the dogmatism of the individualistic school another form of dogmatism equally arbitrary. Assuredly man is social, and so are his legal rights; but these are simply manifest facts of existence; it is only by metaphor that they can be called a "law." The existence of this supposed transcendent "law" does not in any way relieve us of the problems of right and wrong, justice and injustice, which from time immemorial have been the battleground of philosophical jurisprudence. How is the individual to know the law to which his actions should conform? It is just as much a fallacy to call the principle of social solidarity an "objective law" as it was to describe the Law of Nature as an "objective law." "Law" cannot then be anything more than a belief as to the best means of furthering, in a given society, certain economic principles which are supposed to be advantageous. Even admitting the supremacy of the principle of social solidarity, it is difficult to see why its corollary should be the tyranny of duties to the exclusion of all rights. It is certain that a man cannot live solely for himself; it is equally certain that he cannot live solely for others. Property is no doubt largely a social institution as well as an individual sphere of advantage. Some realisation of right—not only the right, but my right—is a postulate, and the first postulate of personality. Self-abnegation for the sake of the majority is not the only human good. Indeed, there are many circumstances in which it is a positive evil. It is our duty to let live, but it is our right to live. Duguit's doctrine goes far beyond the bare power of the State to exact obedience and the coercion of the individual into law-abidingness. Whatever is, socially and by force of solitary effort, is right and constitutes itself for the individual one great, unquestionable right. It is from this point of view that his philosophy seems to me to be insufficient. To say that a man has no right except to do his duty is to mean either that he has no right at all, or else that he has a claim at least to that minimum of guaranteed freedom which, as it seems to me, is the starting-point of all legal systems.

The Attempt to Eliminate both Subjective Right and Subjective Duty.

Lundstedt's thesis is that rules of law arise from one source only—namely, sheer necessity for order, security and self-preservation in society, which necessities are totally unconnected in their inception with any moral notions whatever: and that the maintenance, over a long period of time, of these rules which have been dictated by naked physical necessity gives rise in due season to the *Rechtsgefuhl*, which we call the sense of right and duty, the perception of just and unjust. Thus criminal law is based solely on self-preservation and the prevention of social disruption, not upon any principle of justice. The principle that restitution must be made for wrongful damage does not rest upon any "common sense of justice," but is merely another product of self-preservation. The "*culpa*-rule" arose from sheer social necessity. Again, it is argued that the law of contract is based not upon any notion of good faith or the validity of promises, but simply upon the social necessity that undertakings for the exchange of valuable interests must be binding. The notion of obligation here is posterior to that of economic usefulness. There is no question of rights and duties either here or in torts. The State again is simply a creature of necessity. In sum, law exists solely to prevent harm which is detrimental to the community. It follows that the bulk of traditional jurisprudence is founded on radical fallacies.

Lundstedt's account of the growth of legal rules rests upon historical assumptions which lack all substantiation. What seems tolerably well-established is that in the earliest reliable records of primitive societies, law, so far from being based on mere expediency, seems to be governed by the very definite and powerful notions of guilt. All ethical notions in Lundstedt's view, are the result of experience alone; law—an "objective situation," a fact—engenders law-abidingness—a moral sentiment. There is here a profound fallacy. A moral principle does not cease to be moral merely because it is necessary. The recognition of the necessity for some kind of compromise between egoism and altruism itself proceeds from a moral impulse or intuition, which cannot be acquired by mere empiricism. The very impulse of self-preservation is not unconnected with moral perceptions. Men, with every step that they advance from the beasts of the field, desire to preserve their lives for the sake of things which are worth living for: and that can only mean the development of a qualitative

moral discernment. Lundstedt's law consists solely of deterrent force. He entirely ignores the fact that no small part of legal contention is "not the struggle of right against wrong, but of right against right." Law results from a belief, right or wrong, in what is good and beneficial for the individual and for society. A spirit of law-abidingness and a sense of the distinction between rightfulness and wrongfulness have in fact come into existence in the course of time. Why, then, social man being what he is, are we called upon to banish the notions of right and duty, of lawfulness and unlawfulness, from legal conceptions? It is impossible to eliminate subjective right from law, as Duguit would have us do; it is *a fortiori* impossible to eliminate both subjective right and duty from law, as Lundstedt would have us do.

Mr. Justice McCardie said: We English lawyers too often omit to consider the subtle and interesting work of the continental jurists. It is most pleasant to obtain a clear view of the wide sweep of thought traversed by the two distinguished lawyers whose theories Professor Allen has examined. But when he spoke of legal duties, I said to myself: "As a citizen, where are my legal duties?" The reply is: "In some thousands of reported legal decisions, in some thousands of statutes, and in regulations which no man's mind can possibly compute or understand." Yet, if you consider the main duties of life, it is an odd thing how easily you can state them, and in how small a compass. First, be honest; secondly, be moral; thirdly, fulfil your contracts; fourthly, pay your debts; and fifthly, be careful in everything you do, say or write.

The vote of thanks was seconded by Mr. H. F. Jolowicz, Sub-Dean of the Faculty of Laws.

Professor C. K. Allen delivered the second of his lectures on this subject at University College, on Wednesday, 22nd October.

He began by defining a legal right as "the legally guaranteed power to realise an interest," and discussed the question of whether some laws might impose duties without simultaneously creating rights. Austin had recognised four kinds of absolute duties: self-regarding; towards mankind at large; not regarding persons (e.g., towards the lower animal or the general sentiment); and towards the sovereign imposing them. Professor Allen thought that the duties imposed by criminal law had no true counterpart in legal right. From the point of view of the State the duty was enforced, not to implement any specific right but to maintain order and security. The "right" of the State to punish was very different from right in the sense of power to realise an interest. Legal right was essentially the attribute of an individual in his relation to other individuals.

The distinction between absolute and relative duties was necessary to distinguish duties imposed in the general interests of society from those which related to the specific rights of individuals. It was a duty to refrain from ill-treating an animal, but the animal had no enforceable right not to be ill-treated, and it was impossible to suppose that a right resided in the public in this case to have its humane sentiments protected. A man who committed a public nuisance committed a crime but violated no rule unless he also happened to be committing a private nuisance and to be infringing a particular right of an individual.

Absolute Liability Distinguished from Absolute Duty.

It had often been said that the owner of a peculiarly dangerous thing owed a duty to insure neighbours and others against damage, irrespective of negligence. In *Rylands* v. *Fletcher* (1866), L.R. 1, Ex. 265, the court had debated whether the duty which the law cast upon the defendant who owned a dangerous thing was an absolute duty to keep it in at his peril, or merely a duty to take all reasonable and prudent precautions. The use of the term "duty" here was unfortunate. It was difficult to see that there was any duty to prevent a dangerous thing from escaping through no fault of the maintainer. The truth seemed to be that the owner of a dangerous thing imposed upon his neighbours an exceptional risk against which he should indemnify them. This was a liability, but to call it a duty was a confusion of ideas. The court in *Rylands* v. *Fletcher* had stated the true doctrine more accurately when it had said, later in the same judgment, that the owner "was responsible for" all the natural consequences of the escape of the thing.

A man who committed a criminal offence in ignorance that it was unlawful was liable to punishment, but could not be said to have committed the breach of a duty of which he was unaware. The rule "*ignorantia juris neminem excusat*" was really based on considerations of evidence.

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Moral and Legal Duties.

The usual distinction between moral and legal duties defined moral duties as those enforced by the sanction of the individual conscience, and legal duties as those enforced by physical or material sanctions imposed by extrinsic and irresistible might. This distinction was essentially unsound. Duty could only be subjective and moral and could only be enforced by individual conscience. A penalty for disobedience was not the enforcement of a duty, for the sovereign command was not necessarily a duty to the individual. A person who was subject to the law might approve a command with his conscience or disapprove it; if he disapproved it and disobeyed it in the belief that the greater good was to stand by what he considered right, he was fulfilling a duty. If he disapproved it and obeyed it out of fear, he was violating a duty. Ultimately the individual must decide for himself whether he ought or ought not to obey a given law. Conflict was fortunately rare in healthy modern states; wise individuals judged that in most cases the greater good was served by compromising principle and submitting to the forces of law and order, and laws did not commonly violate normal moral sentiment. Common law sprang from popular practice and approval, and statutory law dared not enforce commands which did not accord with the ordinary sense of duty. Law tended to reinforce by commands and penalties the more elementary moral duties of respect for the property, lives, liberty and general well-being of others. The majority of citizens already observed these duties, and the law voiced their sentiment with the object of protecting it against the indifferent or hostile minority. Nevertheless the law had sometimes to furnish a stimulous and an example to average morality. The criminal law of England had gone in advance of current average morality in abolishing duelling and in regulating the drink traffic. The law could not, however, demand moral standards beyond the normal capacity of the average person without incurring the risk of disobedience and futility.

The distinction between the average morality and the highest morality was drawn daily by our judges in the exercise of one of their most interesting functions: that of keeping a finger delicately but firmly upon the pulse of the accepted morality of the day. A great opportunity awaited the student of the doctrine of "public policy." The judicial conception of the

policy of the day had entirely changed the doctrine of restraint of trade, and the President of the Probate, Divorce and Admiralty Division had recently called in the assistance of the Attorney-General to argue the whole historical development of the discretion of the court in divorce (*Apted* v. *Apted and Bliss* [1930] 46 T.L.R. 456).

ALTRUISTIC DUTIES.

The work of the moralising process of law appeared especially clearly in the extension of altruistic duty. The law generally required only that we should treat our neighbour as if we did not hate him, but the application of this principle sometimes appeared contrary to a very moderate standard of morality. A citizen was under no duty to warn another of danger which he had not himself caused, still less was he commanded to save life at his own risk. In legal theory it was difficult to place a precise limit to altruistic duty, but it should not be impracticable to establish by evidence when and when not the effort of rescue might be made without unreasonable risk to the rescuer. Nevertheless, if an altruistic duty be self-imposed and partly performed, the breach of it might amount to manslaughter (*Reg.* v. *Instan* [1893] 1 Q.B. 450), or even murder (*Reg.* v. *Marriott* (1838), 8 C. & P. 425). Many acts otherwise illegal might be justified on the ground that they were done for the plaintiff's benefit with a good and charitable motive. Moreover, a plaintiff who had incurred injury in seeking to protect a near relative could sue the person whose fault had threatened that relative's person (*Brandon* v. *Osborne, Garrett* [1924] 1 K.B. 548). In Scotland and America this principle had been extended to give a right of redress to any rescuer, even though unrelated. The law in such cases assumed that the impulse to purely altruistic conduct is part of the morality of the average man—an assumption which would probably not have been admitted a hundred years ago. It was not improbable that some day the law might imperatively require of human nature at least that minimum of altruism which most sensible persons considered to be part of the plain man's plain duty, even though it was not likely ever to enforce the supreme self-sacrifice of which few citizens were capable in an imperfect world.

King's College, London University.

THE LAW AS A PROFESSION.

Lord Atkin delivered an address to the students at King's College, London University, on Wednesday, 23rd October; Lord Blanesborough occupied the chair.

The profession of the law, he said, was an essential one in a complex society, and those who followed it were good citizens, performing a duty which was essential if the machine of civilisation were to move at all. There was a common belief that lawyers promoted strife. The bulk of the work of the legal profession was not concerned with disputes, but when disputes occurred nothing could be more untrue than to say that lawyers were breeders of strife. They were the greatest peacemakers in the country. There was no man of any standing at all in the legal profession whose main object was not to settle a dispute out of court if he could. In these days lawyers settled many more quarrels than they assisted to fight. A good deal of the body of the law was concerned with preventing disputes; for example, the provision, which dated back from the Stuart times, that certain contracts should be in writing, and the rule that certain documents should be attested.

THE DUTIES OF AN ADVOCATE.

It was repeated from time to time by people who ought to know better that the advocate was a venial person who sold his talents for money. If this were a true picture, the profession would not contain those men who did it most credit. The principle of British litigation was that the two parties put their case as best they could before an impartial tribunal, and that the advocate, within the limits of truth and honour, put his client's case as forcibly as possible. An advocate who thought that a case was not honest invariably refused it. Dr. Johnson, when asked what he considered the duty of an advocate, had replied, "Sir, you are not to tell lies to the judge." This was a rule consistently and regularly followed by the legal profession in this country as a whole. Running-down cases provided the most striking examples of honest disagreement on fact between the parties, and where the disagreement was on a point of law there was so much room for difference of opinion that an advocate might urge freely a view with which he did not himself concur, for it often happened that the opinion of the judge or the House of Lords differed from his own.

Of an advocate's duties Lord Brougham had said, when defending Queen Caroline, that an advocate owed no duty to anyone in the world but his client, to save that client by all expedient means and to protect that client at all hazards and costs, among others to himself; that he must in the execution of that duty not regard the alarm, suffering, torment and destruction that he might bring upon any other person. Even if it were his unhappy fate to involve his country in confusion for his client's protection, that was none the less his highest and most unquestioned duty. Lord Brougham's view had been corrected a few years later by Chief Justice Coleman, who had stated that an advocate should uphold the rights of his client by lawful means and should reconcile his client's interests with the eternal interests of truth and justice. At all events, the duty of the advocate was one of the highest that a citizen could perform. No one who had watched a litigant falteringly conducting his own case could speak slightingly of the occupation of an advocate.

THE QUALITIES OF AN ADVOCATE.

It was very often said that such and such a boy ought to go to the Bar because he talked so much, or argued everything. "Talking so much" was not a first-rate qualification, and many members of the legal profession had suffered from excess of zeal in that respect. Powers of argument were desirable, but they developed with exercise. One thing was essential: the capacity for hard and regular work. Nobody had ever risen in the legal profession by doing a few hours' work here and there when the mood came upon him. Another quality of importance was normal sympathy and normal interests. A barrister should be in his intellectual activities what he should be in his social tastes—a good "mixer." He must sympathise with the plain man's view and the subjects that interested the plain man, and must be prepared to take an intellectual interest in every small detail which happened to form part of the case he was preparing. Most of the research on a case had to be done by counsel, who was not substantially assisted by his client. It was also necessary to take a sane view of life and to exercise the gift of common sense and that amount of self-discipline and uprightness which enabled an advocate to avoid confusing his client's interests with his still higher duty of observing the truth. A barrister who obeyed these rules might succeed, even though he had no unusual intellectual capacity.

A university training was of the greatest value to a barrister and useful, though perhaps less so, to a solicitor. It was an advantage to read some subject other than law at the university. The old idea that a man could come down and pass both his examinations in a year was a mistake; the student should take two, and sometimes three, years. Qualification for a profession was not a mere question of shaking off the shackles of learning and starting to practise. A barrister passed an examination in the subjects in which he was going to practise, and had need to know them fairly thoroughly. He did not lose time in studying for examination.

PROSPECTS.

The legal profession was at the present time subject to the same depression which afflicted all others, but this was a necessary result of the shortage of money. Persons who had not very much money naturally and properly economised in litigation; on the other hand, when money was plentiful they delighted in spending it on going to law. There had been a time when the Government had taken 80 per cent. of excess profits; in those days members of the commercial public had come to the conclusion that, as the Government would practically be paying 80 per cent. of their law costs in any event, there was no reason why they should stint them; the result had been that many members of the Bar had done very well. In the future there was bound to be great scope for legal activity. Lord Atkin did not look forward to an increase of quarrelling amongst citizens, but the more complex civilisation and the rules which governed a citizen's conduct became, the more necessary was it that there should be people to interpret the law, and the more certain was it that disputes would arise. Moreover, the more motor cars there were on the roads, the more running-down cases would be brought!

Lord Blanesborough proposed a vote of thanks to Lord Atkin, and Dr. W. N. Hibbert, Dean of the Faculty of Laws, proposed a vote of thanks to the Chairman.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall on Tuesday, 21st October, 1930 (Chairman, Mr. J. C. Christian-Edwards), the subject for debate was: "That the greatest danger to civilisation lies in its intellectuals." Mr. Herbert Shanly opened in the affirmative and Mr. Ross in the negative. The following members also spoke: Messrs. Batten, Jessup, Ungoed-Thomas, Pleadwell, C. F. S. Spurrell, Ronald Davies, I. L. Lewis, Baden-Fuller, R. P. Mitchell, and Cockburn. The opener having replied, and the Chairman having summed up, the motion was put and carried by four votes.

The Warwickshire Law Society.

The Annual Meeting of the Warwickshire Law Society was held on Monday, 27th October, at the Regent Hotel, Leamington, when there was an important gathering representing not only the solicitors practising in Warwickshire, but leading figures in the legal institutions of the country. The chair was taken by Mr. Leslie Overell (President of the Warwickshire Law Society), and the chief guests were the Master of the Rolls (Lord Hanworth) and Sir Roger Gregory (President of The Law Society). Among others present were Mr. R. A. Willes (Deputy-Chairman of the Warwickshire Quarter Sessions), Mr. E. F. Hadow (President of the Coroners' Society), Mr. W. A. Coleman (Chairman of the Associated Provincial Law Societies), Mr. G. A. C. Pettitt (President of the Birmingham Law Society), Mr. Walter Browett (President-Elect of the Warwickshire Law Society), the Archdeacon of Warwick (Canon Holland), and Mr. C. J. Band (Official Receiver for the Coventry district).

The toast of "The Bench and the Bar" was proposed by Mr. Overell, who, in doing so, remarked on the pleasure he had had in occupying the presidential chair in a town in which his father and grandfather before him had practised as solicitors.

Lord HANWORTH, replying, said that the Master of the Rolls was really the god-father of all solicitors. He presided at their baptism, and it was to him that they appealed when things hadn't gone quite well. (Laughter.) Proceeding, he said that law simply deduced from text-books was somewhat dull, but he had always found the deepest interest and a wonderful explanatory power in reading biographies of lawyers and finding out how and why the law was changed from time to time. During the nineteenth century there was a greater change in system and administration of the law than during the whole of the three preceding centuries. The whole of the system of procedure was changed; all the laws of evidence were changed. Readers of Dickens would remember that in the case of *Bardell* v. *Pickwick* it was impossible to call the parties to the case, but by the statutes of 1851 and 1897 this became possible, and also for the prisoner in a criminal case to give evidence. The Law of Real Property Act was altered by the statute passed in 1892; and in the eighties there was that great change—which Mr. Birrell said the electors were never asked to approve—whereby a wife was able to hold property apart from her husband. What the opinion of the male voter would have been, if asked, one could not say—he was never asked. Those who had taken the trouble to read the biographies of great lawyers would have found in them the key to the great alterations of the law which had been made. Horace Twiss's History of Lord Eldon showed the stiffness of that Lord Chancellor in resisting any change at all, and Sir Samuel Romilly's great work to produce change would also be noticed. He (Lord Hanworth) always recommended everyone to read the great speech delivered by Lord Brougham in Parliament in February, 1828, a speech which induced so many changes in the thirties and led to the starting of the Commission on the Common Law. Brougham's speech took six hours to deliver, and he consumed a hatful of oranges. (Laughter.) Lord Westbury had said that the great qualification for a judge was that he should be a gentleman and have a touch of common-sense, but if he knew a little law, so much the better. (Laughter.) "I am inclined to agree with that," said Lord Hanworth. "The 'Gentleman's Psalm' (the fifteenth) is the one we sing annually at the beginning of our legal term, and it always seems to me that it shows Lord Westbury's aphorism to be well-founded."

Referring to his experience of international tribunals at the Hague and at Leipzic, Lord Hanworth said: "Wherever I have been, Continental lawyers have always admired and envied the administration of justice in England, and I have often wondered what was the cause of our system being such as provoked the envy and admiration of all other countries. I have come to the conclusion that it is by reason of the system whereby our judges are chosen. Believe me, it is a great factor in the administration of justice that we should have a fearless and independent Bar. (Hear, hear.)

It is from the Bar that the judge is chosen. Unlike continental countries, where the judge is a trained civil servant, the English judge is one who has been buffeted by the waves—and possibly the sea—of adversity at the Bar, and during his training, which has been so severe and his experience so varied, he has learned to appreciate what he might not otherwise learn—the wisdom that comes from close contact with all sorts and conditions of men. That undoubtedly makes for the strength and independence of the Bar. I know well what it is to have counsel before me who can present their case well, and I am not revealing any secret when I say that one who can present a case well is my colleague, Mr. Willes. So much law to-day is the effort which has to be made at the Bar and by the Bench to interpret Acts of Parliament. I am not going to offer cheap abuse of the draughtsmen—I know how difficult is their task—the very complexity of the strata of society makes it difficult to put into plain and simple language what is intended; and, more than that, in going through the House of Commons amendments are accepted which make for confusion, with the result that the Bench and Bar have what an American has called the task of "unscrewing the inscrutable." (Laughter.)

In conclusion, Lord Hanworth said: It is because each of us is endeavouring to maintain the traditions of our profession that we appreciate such an occasion as this, and we look to you who come after us to maintain those great traditions and be able to say that you have upheld the great standard of the law.

Mr. WILLES also replied.

Mr. E. F. HADOW proposed "The Law Society and the Provincial Societies."

Sir ROGER GREGORY, in response, said that they all desired to make the legal profession great and to maintain its honour. Unfortunately there had been in recent times an epidemic of scandals—which to the ignorant and uninformed appeared to throw a slur on the whole profession—but to those who really knew the work of the profession they were small indeed. (Hear, hear.) But The Law Society was determined, as far as human power could do it, to put a stop to those scandals. (Hear, hear.) Two Bills were now before Parliament, one promoted by Sir John Withers, and the other by The Law Society, both with the same object, but adopting different means. In fact, they were both tumbling over each other in trying to do what they agreed must be done. Probably both Bills would be referred to a Joint Parliamentary Committee—one of the best tribunals the world furnishes. He felt sure that the law societies of the provinces would support the endeavours that were being made to uphold the honour of the profession and to punish the evil-doer.

The subject of legal education, continued Sir Roger Gregory, was another matter which was engaging their attention. He, personally, was not entirely in favour of a Law School—of the young articled clerk going some miles away from his office to attend theoretical lectures in a distant town. In his opinion, the proper atmosphere was that of his master's office, where he could learn how to deal with his fellow men, and come to quick decisions, and how to conduct himself as a gentleman. When he had learnt Rule 65 as to costs, and what time the Master goes out to lunch, and when to make *ex-parte* applications, his education will be nearing completion (Laughter.)

In conclusion, Sir Roger referred to the encroachment which was being made on judicial functions by Ministries in Whitehall. He had the honour to serve on a committee which was enquiring into that matter, and without presuming to prejudge the question, he felt that the Ministries were attracting to themselves a mass of judicial power which might be a serious menace to the liberty of the subject. (Hear, hear.) He recognised, of course, that, with the mass of domestic legislation taking place every year, Ministers—of course it meant clerks (hear, hear)—that clerks must have a certain amount of judicial power to deal with questions that arose. But what he objected to was the exercise of that power in secret and without the subject having the opportunity of knowing whether what was done was actuated by justice or some hidden political motive. That was not for the good of the country. Mr. W. A. Coleman also replied.

Mr. C. J. Band proposed "Our Guests," to which response was made by Canon Holland and Mr. G. A. C. Pettitt.

Rules and Orders.

LAND REGISTRATION ACT, 1925.
PRACTICE LEAFLETS FOR SOLICITORS.

PRIORITY CONFERRED BY OFFICIAL SEARCHES BY POST.

1. *Personal searches of the register are neither desirable nor necessary.*—They are not desirable; official certificates of the result of search, issued *without fee*, give a protection to purchasers not given by personal searches. Neither are they necessary.

(*a*) If the Land or Charge Certificate is in the hands of the Vendor, it takes the place of the register for the purposes of a sale. It contains a facsimile of the register as well as a plan of the land, and is conclusive evidence as to the entries in the register up to the date endorsed therein. It can be posted to the Registry at any time to be officially examined and (where necessary) altered to correspond with the register *without fee*. Hence a registered proprietor

negotiating a sale or mortgage is in a position to show his title up to the date of the negotiations, and can give a proposed purchaser or mortgagee the same information as he would have obtained by an inspection of the register at that date.

(*b*) If the Land Certificate is deposited at the Land Registry owing to the existence of a charge or for any other reason, Office Copies of the register and (if required) of the plan can be obtained by vendors, or authorised purchasers, from the Registry at the cost of 1s. 6d. for a copy of the register and 1s. 6d. for a copy of the plan.

2. *There is no occasion for the purchaser or his Solicitor to attend at the Registry to inspect the register.*—To guard against any possible adverse entry in the register, or the issue of an official certificate of search in Form 94 conferring priority on a proposed dealing, subsequent to the date when the Land or Charge Certificate was officially compared with the register or to the date of the last entry shown in an up-to-date Office Copy of the register, a purchaser, authorised by the registered proprietor to inspect the register, can make an application by post in Form 94 for an Official Search of the register to be made and a certificate of the result posted to him *without fee*, stating whether or not such an entry has been made and, if so, giving an Office Copy of such entry. This Office Copy is conclusive evidence.

3. *Priority conferred by an Official Search.*—Under Rule 1 of the Land Registration Rules, 1930, where a purchaser has obtained an official certificate of the result of search in Form 94, any entry which is made in the register after the date of the certificate and before an application is made for registration by the purchaser of the instrument effecting the purchase (and is not made pursuant to a priority notice or Mortgage Caution entered on the register before the certificate is issued) shall be postponed to the application by the purchaser provided such application :—

(*a*) is in order under the Act and Rules ;

(*b*) is delivered at the Registry before the office is opened or deemed to be opened on the third day after the date of such certificate ;

(*c*) is accompanied by such certificate, which shall be retained in the Registry ; and

(*d*) affects the same land or charge as the postponed entry.

4. If the completion has to be postponed, or the registration cannot be completed within the period prescribed by the above Rule, a further official search can be applied for in Form 94 and may be made *without fee* if Form 94 is accompanied by a letter explaining the reason for postponement or delay.

BY ORDER OF THE CHIEF LAND REGISTRAR.

H.M. Land Registry,
London, W.C.2. *July*, 1930.

The Rules of the Supreme Court (No. 2), 1930.

Dated August 20, 1930.

We, the Rule Committee of the Supreme Court hereby make the following Rules :—

1. The following Rule shall be added to Order XLII and shall stand as Rule 24 B. :—

"24 B.—(1) Any application for leave to enforce an award of the Mixed Arbitral Tribunal under the Treaty of Peace (Turkey) Act, 1924,(*) in the same manner as a judgment or Order to the same effect pursuant to the Treaty of Peace (Turkey) Order, 1924,(†) shall be made by summons.

"(2) The summons shall be intituled : 'In the matter of the Treaty of Peace (Turkey) Act, 1924, and in the matter of the Treaty of Peace (Turkey) Order, 1924, and in the matter of an award by the Mixed Arbitral Tribunal at Constantinople dated the day of and in the matter of A.B. of (name of party against whom it is sought to enforce the award).'

"(3) The summons shall be an originating summons (and unless otherwise ordered by a Judge or Master) shall be served on the party against whom it is sought to enforce the award in the same manner as a writ of summons is required to be served. The party served shall not be required to enter any appearance thereto."

2. These Rules may be cited as the Rules of the Supreme Court (No. 2), 1930, and the Rules of the Supreme Court, 1883, shall have effect as amended by these Rules.

Dated the 20th day of August, 1930.

Sankey, C.	*A. A. Roche*, J.
Hewart, C.J.	*Rigby Swift*, J.
Hanworth, M.R.	*T. R. Hughes.*
Merrivale, P.	*C. H. Morton.*
P. Ogden Lawrence, L.J.	

* 14-5 G. 5. c. 7. † S.R. & O. 1924 (No. 820), p. 1439.

Legal Notes and News.

Honours and Appointments.

Mr. A. G. P. Pullan, Judge of the Oudh Chief Court, has been appointed a Puisne Judge of the High Court at Allahabad in the vacancy which will occur in January next by the retirement of Mr. Justice Barjor Jamshedji Dalal.

Mr. R. B. Bennett, K.C., Prime Minister of Canada, has been elected an Honorary Bencher of Lincoln's Inn. Mr. Bennett was formerly President of the Canadian Bar Association.

Mr. Gilbert Stone, B.A., LL.B., Barrister-at-Law, has been appointed a Puisne Judge of the High Court of Judicature at Madras in the place of Mr. Justice J. P. Eddy, resigned. Mr. Stone is joint author of that well-known book "The Law relating to Moneylenders."

Mr. Percy Nickson, Solicitor, High Wycombe, has been appointed Clerk to the Beaconsfield Justices.

Mr. N. A. S. Robinson, Solicitor, who was last year appointed Deputy Town Clerk of Loughborough, has now been appointed Town Clerk of that borough in succession to Mr. Harry Perkins, who is retiring after thirty years' service.

The King has been pleased to appoint The Hon. Sir Philip Whistler Street, K.C.M.G., Chief Justice of the Supreme Court of New South Wales, to be Lieutenant-Governor of that State and its Dependencies.

Mr. Eldred Oliver, Solicitor (Messrs. Browning, Oliver and Oliver), Bradford, has been elected a Fellow of the Royal Geographical Society. He is a Vice-President of the Bradford Historical and Antiquarian Society and has travelled extensively in Northern Europe.

Professional Announcements.

(2s. per line.)

Arthur Fred Stapleton Cotton, of Theodore Bell & Co., solicitors, Epsom and London, Clerk to the Epsom Magistrates, has been elected a Director of the Queen Victoria-street (London) Board of the British Law Insurance Company, Limited.

Professional Partnerships Dissolved.

D. D. Miller and H. S. Elderkin, solicitors, 319, High Street, West Bromwich, under the style of Rankin Miller, and Co.

Raymond Cliff and Thomas Norman Jones, solicitors, 20, Castle-street, Liverpool, and 56A, Market-street, Hoylake, dissolved by mutual consent as from 30th September, 1930.

William Drysdale, William Glasgow and Thomas Winlack Harley, solicitors and notaries public, 1, Water-street, Liverpool (Simpson, North, Harley & Co.), dissolved by mutual consent as from 30th September, 1930, so far as concerns W. Drysdale, who retires from the firm. The business will continue to be carried on by W. Glasgow and T. W. Harley.

George Fallowdown, Oulton Lee and Charles Ernest Oulton Lee, solicitors, Commerce-court, 11, Lord-street, Liverpool (Oulton Lee & Son), dissolved by mutual consent as from 30th September, 1930. The practice will be carried on in the future by C. E. Oulton Lee.

Alfred Warren Melhuish Robert William Emmet, and Ernest Arnold Emmet, solicitors, 14, Bloomsbury, square, London, W.C.1 (Emmet & Co.), dissolved by mutual consent as and from 31st July, 1930.

Wills and Bequests.

Mr. Patrick Murray, of Eaton-terrace, Edinburgh, Writer to the Signet, of Messrs. Murray, Beith and Murray, a director of the Scottish Provident Institution, and lately vice-chairman of the Royal Edinburgh Hospital for Sick Children, who died on 27th July, aged eighty, eldest son of the late Andrew Murray, a former Crown Agent for Scotland, left personal estate in Great Britain valued for probate at £94,664.

Mr. Arthur Irving Smallwood, solicitor, of Essendene, Lillington-avenue, Leamington, and of Birmingham, left estate of the gross value of £17,577 with net personalty £14,238.

Mr. Henry Hodge, of Beverley, Yorks, solicitor to the East Riding County Council, left estate of the gross value of £10,353, with net personalty £2,041.

Mr. Ernest James Carlisle, solicitor, of Bishops Down Grange, Tunbridge Wells, senior partner in Carlisle, Birley, and Carlisle, solicitors, of St. Ann's-square, Manchester, who died on 8th August, aged sixty-three, left estate of the gross value of £58,842, with net personalty £49,237. He left (*inter alia*): £150 each to Albert Howorth and Llewellyn James; £50 each to other clerks in the employ of his firm of not less than five years' service; £50 to his chauffeur, Harry Kinsey, if still in his service; £10 each to his gardeners, William Pierce and Albert Baldry, on like terms; and £2 for each year of service to his domestic servants.

Mr. George Frank Paddock, of Hartwell Hall, Barlaston, Staffs, solicitor, who died on 8th June, left unsettled property of the gross value of £88,591, with net personalty £48,008. He left (*inter alia*) £100 between his cashier Haines, his cashier Dean, his manager Mayer, and his bill clerk Huson; to each of the clerks who have been in the employ of Paddock, Sons and Orme for five years, £20; the following legacies to persons if still in his service:—£25 each to Wells and Fisher, gardeners; £25 to Birks, chauffeur; £10 each to Tabbener, cowman, and Miss Hall, maid; £15 to Miss Eardley, cook; and £5 to Hall.

700 YEARS OLD CEREMONY AT THE LAW COURTS.

The annual ceremony took place at the Law Courts of the Rendering of Quit Rent Services to the Crown by the Corporation of the City of London.

The services are two in number—one by the tenants and occupiers of a piece of waste ground called The Moors, in Shropshire, and the other by the tenants and occupiers of a tenement called The Forge, in the parish of St. Clement Danes, London, W.C.

Before the ceremony, Sir George Bonner, the King's Remembrancer, to whom the services were rendered, recalled the history of the services, which have been rendered for more than 700 years. He described recent inquiries regarding the sites of The Moors and The Forge, and said that, in spite of all searches, they remained doubtful.

Mr. A. F. I. Pickford, the City Solicitor, then rendered the services. For The Moors he produced a new hatchet and billhook, with which he cut faggots. For The Forge he counted out six horseshoes and 61 nails.

The King's Remembrancer formally acknowledged the services.

THE LAW SOCIETY'S CRICKET CLUB.

The first annual dinner of the club was held at the Trocadero Restaurant on Saturday, 25th October, the President of the club, Mr. G. R. Y. Radcliffe, presiding. Mr. M. D. Lyon, the Somerset cricketer, was the guest of the evening. The number present was not large, but the friendly atmosphere augured well for the success of the club.

During the evening a cup, which had been given by Mr. George Gordon, one of the Vice-Presidents of the club, for the best all-round playing member for the season, was presented to Mr. S. W. Light, the captain of the 1st XI.

Mr. Gordon, in making the presentation, congratulated Mr. Light on being selected to be the first holder of the cup and handed him a silver replica, remarking that he hoped to be spared to present such a replica to the holder of the cup for many years to come.

The Chairman, in responding to the toast of the club, said that cricket appealed to him because it was entirely English; even Australia had no proper understanding of the rule against perpetuities. The solicitors' profession was highly decentralised, and anything which helped to bring its members together and to promote *esprit de corps* was most valuable. The club had suffered in the past from not having a ground of its own, although they were indebted to Lord Riddell for the use of the "News of the World" cricket ground during the past season. The club was only in its second year and its success would be assured if the problem of a permanent ground could be settled.

Mr. Gordon said that he was quite willing to approach his many friends in the profession with a subscription list to raise funds for the purchase of a ground.

Mr. Leon, in proposing the toast of the guests, welcomed Mr. Lyon. He said that in the past they had not found it possible, as a club, to appeal to members of the profession for assistance in providing a ground, and he therefore welcomed the suggestion of Mr. Gordon that he should approach other solicitors.

Mr. Lyon, replying for the guests, wished the club every success and put forward a suggestion for the alteration of the rules of county cricket by imposing a time-limit for each innings.

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MR. A. A. HUDSON, K.C., DECEASED.

A Memorial Service to the late Mr. A. A. Hudson, K.C., who died on 21st August last, at Vevey, in Switzerland, will be held at the Temple Church, Temple, E.C., on Tuesday next, 4th November, at 4.30 p.m.

Mr. Hudson was a Bencher of the Inner Temple, the author of "Hudson on Building Contracts," President of the Appeal Tribunal under the London Building Acts, one of the Panel of Referees of the Railway Conciliation Acts, one of the Panel of Referees of the Court of Arbitration for the Settlement of Trade Disputes, Referee under the Safeguarding of Industries Act, Chairman of the Joint District Board for South Derbyshire under the Coal Mines (Minimum Wage) Act, Commissioner appointed by the Board of Trade under the Boiler Explosions Acts, one of the Panel of Referees under the Landlord and Tenant Act, 1927. Mr. Hudson was also an Associate of the Surveyors' Institution, and an Honorary Associate of the Royal Institute of British Architects.

NATIVE CHIEF'S POWERS OF PUNISHMENT.

The Judicial Committee of the Privy Council—Lord Atkin, Lord Russell of Killowen, and Lord Macmillan—on Monday adjourned the hearing of the appeal by Chief Tshekedi Khama, a native chief of Bechuanaland, against part of a judgment of the Special Court of that Protectorate which raised a question of the right of the chief to burn the house and its contents of a subject as punishment for an armed attack on him when sitting in Kgotla (Council).

After counsel for the appellant had argued at length the effect of the Proclamation relating to the Protectorate, Lord Atkin said that questions of constitutional law would arise. The Board were, on that matter, to some extent hampered because the respondents were not represented before them. All the materials should be before their lordships, and they would, therefore, ask the Colonial Office for their views of the powers of the tribunals of the Protectorate to entertain suits between a native chief and his subjects when the Proclamation only dealt with the question of suits between natives. They would also ask the Colonial Office if they had any view whether the punishment as meted out by the chief was for the peace, order, and good government of the Protectorate.

The hearing would be adjourned with a view to ascertaining those points.

THE RENT RESTRICTION ACTS.

The Minister of Health and Secretary of State for Scotland have appointed a Committee with the following terms of reference :—

"To enquire into and report upon the present working of the Rent Restriction Acts (excluding the special provisions relating to agricultural cottages) and whether any modifications or amendments should be made to them."

The Committee has been constituted as follows :—

Major the Lord Marley, D.S.C. (Chairman).
Captain V. A. Cazalet, M.C., M.P.
Mr. J. E. Edmunds, M.P.
Mr. C. G. Eve.
Lieut.-Col. F. E. Fremantle, O.B.E., M.P.
Mr. Ben Gardner, M.P.
Mr. H. H. George, M.C.
Mr. D. M. Graham, M.P.
Mr. W. Hogg.
Mr. J. S. Mercer.
Dr. Marion Phillips, M.P.
Mr. E. D. Simon, M.P.
His Honour Judge Thomas Mordaunt Snagge.

The secretary of the Committee will be Mr. E. C. H. Salmon, M.C., of the Ministry of Health, to whom all communications on the subject should be addressed.

Two further members representative of the views of local authorities will be appointed at a later date.

It will be observed that the terms of reference to the above Committee exclude consideration of the special provisions of the Rent Restriction Acts relating to agricultural cottages, but a Committee has been appointed by the Minister of Health and the Minister of Agriculture and Fisheries with the following terms of reference :—

"To enquire into the conditions of occupation of agricultural cottages in England and Wales which are either let to, or provided for, agricultural workers in consequence of their employment. To report upon the present working of the special provisions of the Rent Restriction Acts relating to such cottages, and to make recommendations as to any alterations which may be desirable in the existing law."

This Committee has been constituted as follows :—

Mr. Walter Robert Smith, M.P. (Chairman).
Mr. David Black.
Mr. George Dallas, M.P.
Mr. H. H. George, M.C.
Viscount Lymington, M.P.
Mr. J. C. McGrath.
Miss Picton-Turbervill, M.P.

The secretary of this Committee will be Mr. J. J. Maynard of the Ministry of Agriculture and Fisheries, Whitehall, S.W.1, to whom all communications on the subject should be addressed.

DOMINIONS AND PRIVY COUNCIL.

Speaking at the Trafalgar Day luncheon, says *The Times*, Mr. Edgar, a member of the Victorian Legislative Council, and a leading barrister, said that if some of the ablest jurists of the Dominions were appointed permanently to the Privy Council, it would enormously strengthen the bond of Empire which the Council constituted.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA	APPEAL COURT No. 1	GROUP I. MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
			Witness. Patt II.	Witness. Part I.
M'nd'y Nov. 3	Mr. Blaker	Mr. Andrews	Mr.*Jolly	Mr.*Blaker
Tuesday .. 4	More	Jolly	*Ritchie	Jolly
Wednesday 5	Ritchie	Hicks Beach	*Blaker	*Ritchie
Thursday . 6	Andrews	Blaker	Jolly	Blaker
Friday 7	Jolly	More	Ritchie	*Jolly
Saturday .. 8	Hicks Beach	Ritchie	Blaker	Ritchie
	GROUP I. MR. JUSTICE BENNETT Non-Witness.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness. Part II.
M'nd'y Nov. 3	Mr. Ritchie	Mr. Andrews	Mr. Hicks Beach	Mr.*More
Tuesday .. 4	Blaker	*More	Andrews	*Hicks Beach
Wednesday 5	Jolly	Hicks Beach	More	*Andrews
Thursday . 6	Ritchie	*Andrews	Hicks Beach	More
Friday 7	Blaker	More	Andrews	*Hicks Beach
Saturday .. 8	Jolly	Hicks Beach	More	Andrews

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The CHRISTMAS VACATION will commence on Wednesday, the 24th day of December, 1930, and terminate on Tuesday, the 6th day of January, 1931, inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May, 1930) 3%. Next London Stock Exchange Settlement Thursday, 6th November, 1930.

	Middle Price 29th Oct. 1930.	Flat Interest Yield.	Approximate Yield with redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	92½	4 6 6	—
Consols 2½%	57½	4 6 11	—
War Loan 5% 1929-47	102¾xd	4 17 4	—
War Loan 4½% 1925-45	100¼xd	4 9 7	4 9 0
War Loan 4% (Tax free) 1929-42	100¾	3 19 5	3 18 3
Funding 4% Loan 1960-90	94½	4 4 11	4 5 3
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	96½	4 2 11	4 4 0
Conversion 5% Loan 1944-64	106	4 14 4	4 13 0
Conversion 4½% Loan 1940-44	102½	4 7 10	4 5 0
Conversion 3½% Loan 1961	81½	4 6 2	—
Local Loans 3% Stock 1912 or after	67½	4 8 11	—
Bank Stock	267½	4 9 9	—
India 4½% 1950-55	88	5 2 3	5 7 6
India 3½%	65	5 7 8	—
India 3%	56	5 7 2	—
Sudan 4½% 1939-73	98	4 11 10	4 12 0
Sudan 4% 1974	89	4 9 11	4 11 9
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 15 years.)	83½	3 11 10	4 2 7
Colonial Securities.			
Canada 3% 1938	92	3 5 3	4 3 9
Cape of Good Hope 4% 1916-36	96	4 3 4	4 15 6
Cape of Good Hope 3½% 1929-49	86	4 1 5	4 12 6
Ceylon 5% 1960-70	102	4 18 0	4 17 9
Commonwealth of Australia 5% 1945-75	81½	6 2 8	6 5 0
Gold Coast 4½% 1956	95	4 14 9	4 17 0
Jamaica 4½% 1941-71	94	4 15 9	4 16 9
Natal 4% 1937	96	4 3 4	4 15 9
New South Wales 4½% 1935-45	78½	5 14 8	6 17 6
New South Wales 5% 1945-65	79	6 6 7	6 10 3
New Zealand 4½% 1945	97	4 12 9	4 16 0
New Zealand 5% 1946	104	4 16 2	4 15 9
Nigeria 5% 1950-60	104	4 16 2	4 15 0
Queensland 5% 1940-60	78	6 8 2	6 15 0
South Africa 5% 1945-75	103	4 17 1	4 16 9
South Australia 5% 1945-75	80½	6 4 3	6 7 6
Tasmania 5% 1945-75	88½	5 13 0	5 14 2
Victoria 5% 1945-75	80½	6 4 3	6 7 6
West Australia 5% 1945-75	81½	6 2 8	6 7 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	64	4 13 9	—
Birmingham 5% 1946-56	105	4 15 3	4 13 6
Cardiff 5% 1945-65	102	4 18 0	4 17 6
Croydon 3% 1940-60	73	4 2 2	4 14 0
Hastings 5% 1947-67	104	4 16 2	4 15 6
Hull 3½% 1925-55	82	4 5 4	4 14 9
Liverpool 3½% Redeemable by agreement with holders or by purchase	75	4 13 4	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	56	4 9 3	—
London City 3% Consolidated Stock after 1920 at option of Corporation	66	4 10 11	—
Manchester 3% on or after 1941	65	4 12 4	—
Metropolitan Water Board 3% "A" 1963-2003	66	4 10 11	—
Metropolitan Water Board 3% "B" 1934-2003	68	4 8 3	—
Middlesex C.C. 3½% 1927-47	86	4 1 5	4 14 0
Newcastle 3½% Irredeemable	74	4 14 7	—
Nottingham 3% Irredeemable	64	4 13 9	—
Stockton 5% 1946-66	103	4 17 1	4 16 6
Wolverhampton 5% 1946-56	102	4 18 0	4 16 9
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	85½	4 13 7	—
Gt. Western Rly. 5% Rent Charge	102	4 18 0	—
Gt. Western Rly. 5% Preference	96	5 4 2	—
L. & N.E. Rly. 4% Debenture	81	4 18 9	—
L. & N.E. Rly. 4% 1st Guaranteed	75½	5 6 0	—
L. & N.E. Rly. 4% 1st Preference	59	6 15 7	—
L. Mid. & Scot. Rly. 4% Debenture	84	4 15 3	—
L. Mid. & Scot. Rly. 4% Guaranteed	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Preference	65½	6 2 2	—
Southern Railway 4% Debenture	85	4 14 2	—
Southern Railway 5% Guaranteed	101¼	4 18 6	—
Southern Railway 5% Preference	92	5 8 8	—

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